Lex Vadiorum.

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MORTGAGES.

Wherein is Treated,

The Nature of MORTGAGES, either by Deed absolute, and the several Sorts of Proviso's therein; Or by Deseazance, Demise and Redemise, Covenant, or otherwise: With special Clauses, Conditions, &c. Illustrated by many Presidents and adjudged Cases.

ALSO OF

Payment of Mortgage Money, by whom and to whom; and several Cases and Rules of Tender, &c.

Affiguments of Mortgages; and the Manner of Transferring, Accounting, Us. With proper Presidents thereof.

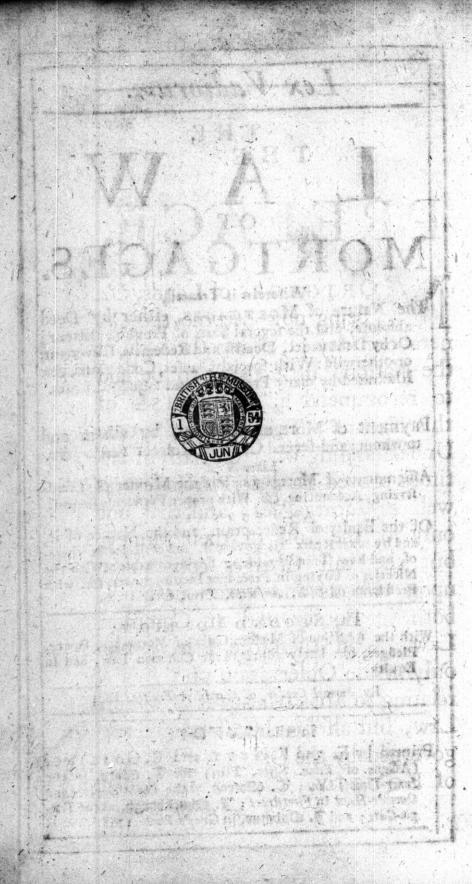
Of the Equity of Redemption, and the Nature of it, and by what Rules 'tis govern'd, and of Releases there of, and how Transferrable or Extinguishable: With the Niceties of buying in Precedent Incumbrances, &c. with Presidents of Bills, Answers, Pleas, &c.

The SECOND EDITION;
With the Addition of Modern Cases of Mortgages, Pawns,
Pledges, Gr. lately adjudged at Common Law, and in
Equity.

By Samuel Carter of the Inner-Temple, Efq;

In the SAVOT:

Printed by E. and R. NUTT, and R. Gosling, (Affigns of Edw. Sayer, Efq.) for T. Mart, in the Inner-Temple Lane; T. Motton, at the Three Daggers and Queen's-Head in Flaetstreet; J. Shuckburgh, at the Temple-Gates and J. Osborne, in Gray's-Inn. 1718.



The Profice

PREFACE.

ORTGAGES of Lands, &c. being now become the General Security for Money throughout the Nation, little needs to be faid to recommend a TREATISE of this Nature. The Want of a true Understanding whereof, hath oftentimes proved fatal to Purchasers as well as Mortgagees; and that not only for the Lois of their Money, but the vast Charges consequent upon tedious and vexatious Suits, both in Equity and at Common Law. And therefore I have not only made Observation on CASES relating to MORTGAGES at Common Law, but also as they stand and are governed by the Decrees of a Court of EQUITY. I have also added feveral

The Preface.

feveral modern Cases adjudged both at Common Law and in Equity, upon Mortgages, Pawns and Pledges. Of all which, if the READER will be pleased to cast his Eye on the CONTENTS next ensuing, he may more fully receive Satisfaction, and supersede the Trouble of Repetition here.

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MORTGAGES.

CHAP. I.

The Nature of a Mortgage. Diversity between Mortgage of Lands, and Pledging of Goods. Mortgage not meerly a Trust in Equity. Parol Agreement to be a Mortgage after a Conveyance. If it appear to be a Mortgage notwithflanding a Deed absolute, yet decreed Redemption. Where not a Lease, but Assurance by Way of Mortgage. No Survivorship of a Mortgage in Equity. Covenant to Reconvey what is not done, the Vendee bath it absolutely. Defesance: The Nature of it. Diversity between Inberitances executed and executory, as to being Defesanced. Diversity between a Release and a Defeasance. Defeasance on Stat. that if such Land be extended, then to be void: How to be construed Releases of Equity. Power of Revocation.

ORTGAGE is derived of two French Words, Mort, i. e. Mortuum, and Gage, that is, Vadium, or Pignus, as if a Feoffment be made upon such Condition, that if the Feoffor pay to the Feoffee

Mortuum vadium, & vivum vadium.

at a certain Day, &c. Forty Pounds, then the Feoffor may re-enter, &c. In this Case, the Feoffee is called Tenant in Mortgage: The Cause why it is called Mortgage, is, for that it is doubtful whether the Feoffor will pay at the Day limited fuch a Sum or not, and if he doth not pay, then the Land which is put in Pledge, upon Condition for the Payment of the Money, is (at Common Law) taken from him for ever, and fo dead to him upon Condition; and it is so called also, to diffinguish it from that which is called Vivum vadium. Vivum autem, dicitur vadium, quia nunquam moritur ex aliqua parte quod ex suis proventibus acquiratur; as if a Man borrows One Hundred Pound of another, and maketh an Estate of Lands unto him, until he hath received the faid Sum of the Issues and Profits of the Lands, so as in this Case neither Money nor Land dies, or is loft, I Inft. 205. a.

Diverfity between Mortgage of Lands and Pledging of Goods.

There is a Difference between Mortgage of Lands, and Pledging of Goods. For the Mortgagee hath an absolute Interest in the Lands, but the other hath but a special Property in the Goods to detain them for his Security. Pledging doth not make an absolute Property, but is a Delivery only till he pays, &c. So it is a Debt due unto the one. and a Retainer of the Thing to the other, for which there may be a Re-demand at any Time, upon Payment of the Money. But in Case of Mortgage of Land, at his Peril he ought to redeem it at the Time limited. Cro. Jac. 244. Sir John Ratcliff versus Davies. Tel 178. In the Case of Pledge, the general Property continues to the first Owner.

A Parol Agreement, after a Conveyance General Rules executed, cannot make it a Mortgage if it touching were not so at first; and as such subsequent Agreement cannot make it a Mortgage if it No Mortgage, were not so originally; so if it were a Mort- if not so at gage at first, no subsequent Agreement can first. alter the Nature of it, or make it otherwise than a Mortgage. For the Rule is, once a Mortgage, and always a Mortgage. Vide Vernon's Rep. 3. 7. 8. Nelfon's Chan. Rep. 226.

'Tis true, there are divers Cases in Equity, Yet an absowhere an absolute Grant, or Conveyance, litte Conveyance and absolute Grant, or Conveyance, ance may be has been decreed redeemable, as a Mortgage; conftrued as a and 'tis highly reasonable it should be so, in Mortgage, Cases of Force, Fraud, or Circumvention; and redeem-And hither may be referr'd the Case of Bar- able. rel, vers. Sabine, in Vernon 268. which proves that the particular Circumstances of a Case. may induce a Court of Equity to make even an absolute Conveyance, redeemable as a Mortgage.

But 'tis a most fure and certain Rule, That Once a Mortan Estate can't at one Time, and by one and gage, and althe same Deed, be made a Mortgage, and ways so. afterwards become an absolute Purchase by the same Deed. See Vernon's Rep. 192. 215.

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Nor can a Mortgage be made as a Mort- No Mortgage gage, or redeemable, of one Side only, and of one Side. not fo of the other, or the Estate be convey'd or fettled absolutely of the one Side, and conditionally of the other. For the Power or Liberty of Redeeming, ought to be reciprocal. See Vernon, ibid. 1 Chan. Rep. 1. 3 Salk. 241.

Also in Equity, a Mortgage (tho' the Deed Mortgage not imports an absolute Conveyance in Trust) is meerly a not to be esteemed as a meer Trust, but as a Title. Right

Right or Title also, Hard. 487. i.e. That the Mortgager on Payment of the Money, has a Right to have the Estate reconveyed to him. And on this Rule are all the Decrees for Redemption of Estates founded. Vide post. Chap. 13 and 14.

What shall be a Mortgage, Or. what not.

What shall be said to be a Mortgage, and what not. See the Cases of Evans and Thomas, Cro. Jac. 172. And that of Danby and Read, in Nelson's Chancery Reports, 226, 227. Vide infra Bowen vers. Edwards, and Evans, vers. Thomas.

Mortgage Money, Personal Estate.

That the Money due on a Mortgage, is part of the Personal Estate of the Mortgagee, and shall go as Affets, in Cafe of the Land to pay Debts. See Nelson's Chancery Reports. 351. 401. Vernon's Reports, 412, 413, Ec. ibid. post Cap. 2.

And Affets, O1.

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Where Mortgage Money shall be Affets in Equity or not. See the Case of Bridgman, Plaintiff, and Twer and others Defendants, Mich. 27 Car. 2. N. Chanc. Rep. 236. viz. T. Goodwin, on the Marriage of his Daughter with the Plaintiff, promised to give her 600 %. The Marriage took Effect, and T. Goodwin dyed, and now the Plaintiff exhibited his Bill against the Executors, to have the Performance of this Promife.

Money due on a Mortgage. Affets.

The Defendants refused to pay the 600 l pretending want of Affets, and that it was a Decreed to be Marriage not only without the Father's Confent, but that the Husband agreed, (promis'd) to settle 50 l. per Ann. on her, which he had not done.

> But it appearing that the Marriage took Effect upon the faid Promise of the Father. and that there were Affets, and 6001. due to the Testator's Estate, which was secured by Mortgage.

Mortgage. And that the Plaintiff, in an Account brought by him against the Executors, had obtain'd a Verdict and Judgment

against them. The Court Decreed.

That the Executors should come to an Ac- Executors to count, and pay the faid 600 l. To which accompt, &c. Payment the Personal Estate shall first be Vide Chap. 18 liable, and if that fall short, then the Principal and Interest due on the faid Mortgage. (after real Incumbrances made by the Mortgageor are taken off) shall be liable to make it good. The Court declaring, That the Money due on such Mortgage (after real Incumbrances fo taken off) was Affets in Equity. and ought to be applied towards the Plaintiff's Satisfaction.

Of Legal and Equitable Affets.

A Purchasor takes a Term in a Trustee's Name, and the Inheritance in his own; this Term, unless declared to attend the Inheritance, is Affets in Equity; and if the Inheritance was in a Trustees Name, and the Term in his own, 'twill be Affets at Law. 2 Chan.

Rep. 152.

In the Case of Chapman and Bond, which fee 2 Chan. Rep. 152. and Vernon's Rep. 188, 9. there had been formerly a Difference taken between Legal and Equitable Affets, which afterwards, in Mich. 1683, was exploded in that very Case, which was thus; A. takes an Affignment of a Term in a Truffees Name, and the Inheritance in his own Name, fo that by Construction in Equity, the Term is attendant upon the Inheritance, and yet twas held, That this Term in Equity shall be Affets for Payment of Debts, as well as a Term

Term taken in his own Name, is Affets at Law. But with this Difference, That the Heir shall have the Benefit of the Surplus of the Trust of a Term, and not the Executor after Debts paid. But if a Term be expresly declar'd by Deed, to be attendant on the Inheritance, there such a Term shall not be made Affets in Equity.

Note, This Point came in by Way of Argument; and so the Difference that had been formerly taken in this Case, between Legal

and Equitable Affets, was exploded.

Affets.

Also Note, That an Equity of Redemption of a Mortgage for Years, is Affets in the Hands of the Heir to pay Bond-Debts; and the like it seems of a Mortgage in Fee. See Vernon, 410, 411. and ibid. 93. and 348. Plantations in Fee, are Assets, and ibid. 419. Lands in Fee in Ireland, are Assets to pay Bond-Debts. And it feems, ibid. 282. That Money raised by the Heir, by the Sale of Real Assets, even before Bill filed, will be Affets in Equity. Sed Quare.

Counterpart an Original.

Note, The Counterpart of a Mortgage was decreed as an Original, the Original Deed

being loft. See Nelson's Reports, 237.

But further to explain the Nature of Mortgages, observe, That in natural Justice and Equity, the principal Right of the Mortgagee is to the Money, and his Right to the Land, is only as a Security for the Money; wherefore when the Security descends to the Heir of the Mortgagee, attended with an Equity of the Redemption, as foon as the look'd upon as Morgageor pays the Money, the Lands belong to him, and only the Money to the Mortgagee, which is meerly Personal, and so accrues to bis Executors or Administrators ; and

Mortgages Part of the Personal Efate.

and the Lord Chancellor Fineb, in Thornborough and Baker's Case, was of Opinion, That all Mortgages ought to be look'd upon as part of the Personal Estate, except the Mortgage of an

Inberitance to a Citizen of London.

And that Money due on a Mortgage, is Money due on Part of the Personal Estate. See the Case of a Morrgage, Martha Corfellis, &c. Plaintiffs, and John Cor- Personal Esellis, &c. Defendants. Saf. 38 Car. 2. in Canc. state, and to N's Chan. Rep. 351. viz. The Defendant by go in Cafe of Infinuation, &c. with the Plaintiff's Father, Lands to pay Debts, &c. who dyed Octob. the 16th, 26 Car. 2. contriv'd a Will, by which the Defendant was made fole Executor, and but 10 s. Devised to the Plaintiff Martha, to bar her of any Claim to the Testator's Personal Estate; and that in Case she dyed without Issue, all his Lands should come to the Defendant John, and his Heirs; and that the Defendant should have the Guardianship of the Testator's Son, an Infant.

All which Matter being fet forth in a former Bill, the Defendant, John, pleaded the faid pretended Will, and infifted upon it.

Afterwards the Plaintiffs discovering several new Matters, by which it appeared, That the Testator had (formerly) intended to give his Estate Real and Personal, to the said Son, the Infant. But that by the Contrivance of the Defendant, or Negligence of the Writer, the Personal Estate was not mentioned in the Will.

And that the Testator having borrowed 2000 l. immediately lent 500 l. to the Defendant, but mortgaged his own Lands, to fecure the Repayment of the faid 2000 l to the Mortgagee; and that afterwards the Defendant mortgaged his Lands to the Testator,

to

now pretends, That no Part of the Personal Estate, ought to be applied for Payment of the Testator's Debts, because charged only on the Real Estate, which ought only to bear the Burthen. And that the Personal Estate is devolved on him as Executor, who, as pretended Guardian of the Infant, had entred on the Real Estate, and receiv'd the Prositts. &c.

Therefore the Plaintiffs exhibited their Bill to discover the Personal Estate, and the Frofits receiv'd of the Real, and praying, That the same may be secured for the Benefit of the Plaintiffs, after the Mortgage dis-

charged.

The Defendant by Answer insists, That the Validity of the Will has been tryed at Law, and a Verdia found for the Will, and that by Virtue thereof, he is entitled to the Perfonal Estate, as Executor, Sc. free from any Trust, either express d, or implyed; and that the Testator before he made his Will, declared, That the Desendant should have his Personal Estate, and that the 2000 l. should be paid out of his Lands mortgaged to Sir W. P. ut supra And insisted on divers other Particulars, for which see the Case at large.

Note this Decree. The Court declared and decreed, That the 2000 l. secured by Mortgage, ought to be taken as a Debt upon Specialty, and That the Testator's Personal Estate, ought in the first Place, to be apply'd towards satisfying the same with Interest, and afterwards of any other the Testator's Debts; and that the 500 l. secured by the Desendant's Mortgage, shall be taken and accounted for by bim as Part of the Personal Estate; and that the Lands mortga-

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ged, shall stand charged with the Payment thereof, and the Defendant to accompt before a Master. And that he shall be examined upon Interrogatories, to perfect his Anfwer: And shall not from that Day, acknowledge any Judgment against the Testator's Estate, &c. Allows Consider Applications

See also the Case of Starling (an Infant) against the Master and Wardens of the Company of Drapers, Mich. 30 Car. 2. N's. Chanc. Rep. 401. where 'twas decreed, That Money due on a Mortgage, shall be paid out of the Personal Estate of the Mortgageor. — And that the Trust thereof should be transferr'd.

So in the Case of Noy, vers. Besustane, & That the aliis, Trin. 29 Car. 2. N.s. Chan. Rep. 305. Money is Pare decreed, That where a Mortgage in Fee was of the Mortforfeited, and the Mortgagee continued in gager's Perso-Possession, the Money shall notwithstanding nal Estate. be the Personal Estate of the Mortgagee, and shall go to his Administrator (or Executor.)

So in the Case of Gardner, vers. Hatton, 29 Car. 2. and others, ibid. 318. a Mortgage in Fee was forfeited, and then the Mortgagee dyed, 'twas decreed, That the Mortgageor shall redeem, on Payment of Principal and Interest to the Executor of the Mortgagee. For 'tis a Part of the Mortgageor's

Personal Estate.

And that the Mortgageor's Personal Estate Also the Pershall be first apply'd towards the Redemp- sonal Estate of tion, or Discharge of a Mortgage, see the the Mortga-Case of Atkins and Nunn, &c. Hill. 25 Car. 2. applied to rein Nelson's Chancery Reports, 97. where the deem the Mortgageor marry'd, and then fettled the Mortgage. Mortgaged Lands in Jointure to his Wife, and dyed intestate, she got Administration, and brought a Bill to discover Incumbrances

Mortgage.

on her Jointure. The Defendant, the Mortgageor's Sifter, claims 200 l. by the Will of her Father, charg'd on the Lands. And Decreed,

1. That the Mortgageor's said Father being only Tenant in Tail, and done no Act to bar it, had no Power to devise this 200 l. in Prejudice of the Mortgageor, the Issue in Tail,

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and the faid Jointure.

2. That the Plaintiff, as Administratrix, (Widow of the Mortgageor) should account for the Intestate's Personal Estate, and that to be apply'd towards Discharge of the Mortgage. See also the Case of Howard, vers. Harris, Mich. 1683. in Vernon, 190, 191.

But in the Case of Pockley, vers. Pockley, Hill. 33. 34 Car. 2. Vernon's Rep. 37. 'twas held, That if a Man purchases an Equity of Redemption and dies, the Mortgage shall not be paid out of the Personal Estate for the Benefit of the Heir, it not being his Ancestor's Debt originally. Sed Quere supra & infra.

But what shall be apply'd towards the Discharge of a Mortgage, and who may discharge it, and in what Cases, see hereafter,

Chap. 13, 14.

Bowen and Edward's Case, 13 Car. 2. The Plaintiff being seised in Fee of the Lands in Question, worth 200 l. per Ann. mortgaged the same to the Desendant's Father for 250 l. and the Plaintiff agreed, and also sealed a Deed for the absolute Purchase of the Premisses to the Desendant's Father, if the 250 l. were not paid at the End of Seven Years: A Redemption was decreed notwithstanding; For the Desendant's Father had exhibited a Bill against the Plaintiff, for the Land or the

Note.

Redemption, where it appears to be but a Mortgage, notwithstand ing a Deed abfolute.

the Money, which made it appear to be only a Mortgage originally ; and it being a Mortpage at first, the subsequent Agreement cannot alter it.

The Lessor mortgaged his Reversion in Lessor mort-Fee to the Lessee for Years, and at the Day gageth to the of Mortgage for Payment of the Money, he Leafe is expaid the Money. It was held that the Leafe tind. for Years was not revived, but extinct.

2 Leon. 6.

The Case of Evans and Thomas was thus. G. H. seised of Land in Fee, covenanted with M.W. to convey it by Fine, or other Affurance to M. W. and his Heirs, before the Feast of Pasch' next following, which should be to the Use of him and his Heirs, with a Proviso, that if he paid to M. W. 100 l. at Where not a the End of Thirteen Years, that then he Leafe, but Affire and the all A Green the sell a furance, by might re-enter, and that all Affurances should way of Mortbe to the Conusor, and covenanted and grant- gage. ed for him and his Heirs, with the faid M. W. and his Heirs, that he and his Heirs, should enjoy the faid Land until the End of the faid Thirteen Years, and after for ever, if the faid 100 l. were unpaid. This is not a Leafe per Cur'; for the Intent of the Parties was. to make Affurance of the Inheritance by Way of Mortgage, which is but a Covenant that Covenant. he shall have it during the Time of the Mortgage; and the Covenant that he should not make Waste (for such Covenant there was) doth not expound it otherwise, but was to the Intent, that he being but a Mortgagee, should not commit any Waste, for which otherwise there was not any Remedy. Cro. Jac. 172. Evans and Thomas. interesting at 1 west to get a service and the consequence

No Survivor-Thip of a Mortgage.

Pine and Nonclaim.

No Survivorship shall be upon a Mortgage. where the Money lent was in Truft, and with Intention that each should have his Moiety and Interest again. 1 Rep. Chanc' 58. 1911 2012

Mortgagee not bound to claim within five

Years of a Fine. 2 Keb. 522.

W. Bargainee of Land for 60 l. by other Indenture covenants to re-make to the Bargainor and his Heirs, fuch Assurance as the Council of the Bargainor shall advise within In what Case a Year ensuing. Proviso, that if the Vendee make Default in the Affurance, then if he do not pay 500 L to the Vendor, that he shall done, Vendee stand seised to the Use of the Vendor; the Vendor does not tender the Assurance, and the 500 l. is not paid. Per Cur', the Vendee hath the Right of the Land; for that it was the Folly of the Vendor that no Affurance was devised and notified to the Vendee. and fo no Default in the Vendee. Der 261. 9. And yet it feems in Equity, that the Vendee shall pay the 500 L to the Vendor. Quere.

Covenant to re-convey which is not hath it absointely.

Defeasance.

Eseasance is derived from the French Word Defaire, i. e. to defeat, or undoe. It signifies a Condition relating to a Deed, Obligation, Recognisance or Statute, which being performed by the Grantor, Obligor, Conusor, the Act ordered or done is avoided. as if it never had been made.

Diversity between Inheritances executed, and executory.

There is a Diversity between Inheritances executed, and Inheritances executory; as Lands executed by Livery, &c. cannot by Indenture of Defeasance, be defeated afterwards. So if a Diffeisee release to a Diffeisor,

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it cannot be defeated by Indenture of De feafance made afterwards; but at the Time of the Feoffment, Release, &c. the same may be defeated; but Rents, Annuities, Conditions. Warranties, and fuch like Inheritances executory, may be defeated by Defeafances, made either at that Time, or at any Time after. 1 Inft. 237. And fo may Statutes. Recognisances, or Obligations, or other Things executory; and of Statutes, Judgments, and Obligations, it is the usual Practice to make a Defeasance of them afterwards. A Defeafance is a conditional Re- Difference belease; and a Release is an absolute Desea. tween a Refance; and the Difference is as aforesaid, Defeasance. between the Defeafance of a Thing vefted, and of a Thing executory; as in a Feoffment of Land, the Condition ought to be contained in the same Charter of Feoffment, or in another Deed sealed at the same Time with the Feoffment, or otherwise the Condition is void; for by the Feoffment, the Estate of the Land is vefted and executed in the Feoffee. Otherwise of Judgments, Obligations, &c. Bargains and Sales, &c.

leafe and a

B. acknowledges a Stat' to S. There was a Defeatance on Defeasance, that if his Lands in the County a Stat', that if of S. should be extended, the Stat' shall be extended to be void. Per Cur', the Defeafance is good, and void. not repugnant, because it is by another Deed; but the Condition of a Bond not to fue, the Obligation is void and repugnant.

Moor 135. Trot & Supurleus.

A Proviso, or Condition, is annexed to be Diversity beinserted in the Deed, or Grant, but a Defea- tween a Defance is usually in a Deed by it self concluded a Condition, and agreed upon between the Parties, and har or Covenant. ving Relation to another Deed. And Note, a Covenant

Covenant not to fue a Bond in 99 Years, is

no Defeasance. Cumberba. 123.

In all Executory Things which are made and created by Deed or Record, (as Bargains and Sales, Judgments, Statutes, Recognifances) the fame Thing by the Confent of all the Parties to the Creation of it, may in the like Way be defeated and avoided. 1 Inft. 236.

Plo. 237. 1 Rep. 112, 113.

The Day and Year of the Indenture of Defeafance, to be fet forth in Pleading.

Releafes,

where allowable in Equi-

ty, or not.

In Debt by A. against B. Executor of C. on the Bond of E. B. pleads that A. by Indenture of Defeafance, bearing Date the fame Day and Year made at Ely, and brought into Court, Agreed, That the Bond should be void, if C. during his Life, should pay five Marks yearly to the Bishop of N. and the Defendant averred that C. during his Life, paid the five Marks yearly to that Bishop: The Plaintiff demurred, and had Judgment principally, because the Plea did not mention what Day and Year the Indenture was dated, nor the Place where the five Marks were paid to him, which was a Matter iffuable. Dyer 27.

It being before observed, That a Defeafance is a Conditional Release, and that a Release is an absolute Deseasance; we may here add the feveral Cases which shew where. and in what Cases a Release of the Redemption of a Mortgage is pleadable in Equity; and in what other Cases, Releases have been

there allowed, or not.

See Nelson's Reports, 111. A Release of the Equity of Redemption of a Mortgage, pleaded, and allowed.

But see ibid. 117. 218. 285. fuch Releases

pleaded, and difallowed.

So ibid. 411. a Release was made of an Annuity by the Truftees, but Decreed, That the Lands should stand charged notwithstanding.

And in Vernon's Rep. 32. a Release set aside, because of the Misapprehension of

him that gave it.

So Nelson 428, a Release set aside, which was given by a Trustee to the Damage of an Infant.

So ibid. 443. A Release given by an Executor, but not as Executor, shall not bar a Demand on another Account. See also ibid.

327.

Yet in Nelson, 311. an Administratrix appointed her Agent to take an Account of W. R. of what was due, &c. who takes the Account, and gave a Release, Decreed she fhould have no further Account, i. e. That the Release was a Bar thereto.

Note, in Vernon 97. a Mortgage, after a Mortgage a voluntary Settlement, with Power of Revocation, and a Will in Confirmation of it, is a Revocation pro tanto only, and ibid. 329.

Note, in the Case of Hall, vers. Bunch, A Mortgage Vernon 329. where A. devised Lands, and subsequent to then mortgaged the same in Fee, 'twas held, a Will, where and decreed by the Mafter of the Rolls, absolute, or That the this was a Revocation of the Will protante only at Law, yet it was not a total Revocation thereof in Equity, but only protanto, as the Mortgage-Money amounted to, which Decree was afterwards on an Appeal, confirm'd by the Lord Chancellor. Videibid. 342.

So in the Case of Thorne, vers. Thorne, Trin. 1683. Vernon 141, and 182. That a Mortgage in Fee. Subsequent to a Settlea Mortgage in Fee, subsequent to a Settlement.

Revocation.

ment, with Power of Revocation, was a

Revocation thereof pro tanto only.

And before that, in the Case of Perkins & aliis, vers. Walker, & aliis, Mich. 1682. Vernon 97. Twas Decreed, That a Mortgage, after a voluntary Settlement, with Power of Revocation, and a Will in Confirmation of it, was a Revocation pro tanto only. And therein is cited the Case of Coke and Bullock, 2 Cro. 49. where a Man devised Lands in Fee, and then made a Lease for Years thereof, and held, That such Lease, if not made to the Devisee, was a Revocation at Law pro tanto only.

CHAP. II.

Mortgage in Fee. Where, and in what Cases the Money paid to the Heir is good. Where the Mortgage Money may be paid to the Assgnee. With a Diversity, where the Money must be paid to the Heir, and not to the Executors. Where the Money may be paid to Executors as Assignees in Law. Of Assignees in Deed, and Assignees in Law. When Election to pay the Money to the first Feosfee, or the second Feosfee. Where it is not safe to pay the Mortgage Money to the Administrator, duranti minore etati. When payable to Legatees, &c. and how apportioned.

Where, and in what Cases, the Money paid to the Heir is Good. See Vern. 170.

e estorială. Acceptation.

IF a Man make a Feoffment in Fee, upon Condition that he pay 100 l. to the Heirs, Executors or Administrators of the Feoffee, within one Year after his Death, that then he to re-enter; and after the Feoffee makes a

Feoffment

Peoffment to F. S. and dies, and the Feoffor pays the Money to the Heir of the Feoffee; this is a good Performance, for the Heir is within the express Words of the Condition, and the Feoffor is a Stranger to the Conveyance which the Feoffee and his Affigns had; and it was refolved that as this where the Condition is, the Feoffee could not pay it Mortgageto the Assignee of the Land, for Heirs, Exe-Money may cutors and Administrators, were expressed in Assignee. the Condition, and the Affignee not: But the Affignee of the Land, although he be not named in the Condition amongst the Persons which shall pay the Money, yet he may well pay Money for the Salvation of

If the Condition be, that if the Feoffor pay to the Feoffee, or to his Heirs, such a Sum at fuch a Day, there after the Death of the Feoffee, if he die before the Day limited, the Payment ought to be made to the Heir Where the at the Day appointed, and in such Case the Money must Money shall not be paid to the Executors; Heir, and not for the Law will never feek, out a Person to the Exewhen the Parties themselves have appointed cutors. one; but if the Condition be to pay the Money to the Feoffee, his Heirs or Executors, then the Feoffor hath Election to pay it to either.

And it was a fine diversity in the 1 Inft. fol. 210. a. If a Man make a Feoffment in Fee, upon Condition that the Feoffee should pay to the Feoffor, his Heirs or Assigns, at fuch a Day, &c. and before the Day the Feof. Where the for makes his Executors and dies, the Feoffee Money may may pay the same either to the Heirs or Exe-cutors, as cutors, for they are his Assigns in Law to this Assignees in Intent. But if a Man make a Feoffment in Law.

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Fee, upon Condition that if the Feoffer pay to the Feoffee, his Heirs and Affigns, 20 & before fuch a Feast, and before the Feast the Feoffee makes his Executors and dies, the Feoffor ought to pay the Money to the Heir and not the Executors, for in this Cafe, the Executors are no Affignees in Law; and the Reason of the Diversity is, in the first Case the Law must of Necessity find out Assigns, because there cannot be Assignees in Deed for the Feoffor hath but a bare Condition. and no Estate in the Land which he can assign over; for he hath parted with his entire Estate in Fee, and the Law shall never reject any Word, if by reasonable Construction it may take Effect; and in this Case the Law adjudgeth his Executors the most apt Persons to receive the Money, because they represent the Person of the Testator for all Goods and Chattels; but in the other Cafe, the Feoffee hath an Estate in the Land, which he may assign over; and where there may be Assignees Deed, and Ar in Deed, the Law shall never feek out any Assignees in Law. And the Executors in this Cafe cannot be Affignees, because Affignees were only intended by the Condition, to be Affignees of the Estate; so it is in a Covenant to ftand feised. 5 Rep. 96. Goodale's Case there cited, and I Iust. 210. a.

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Affignees of the Estate.

Assignees in

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Law.

Election to pay the Money to the first Feoffee,

If the Condition be to pay the Money to the Feoffee, his Heirs or Assigns, and the Feoffee make a Feoffment over, it is in the Election of the Feoffor to pay the Money to the first Feoffee, or to the second Feoffee; and so if the first Feoffee dieth, the Feoffer or to the fe. may pay the Money to the Heir of the first cond Feoffee. Feoffee, or to the second Feoffee, for the Law will not inforce the Feoffer to take Knowledge

ledge of the second Feoffment. But suppose the Feoffer pay it to the second Feoffee, (whose Reoffment is not duly executed) I conceive it's no good Payment, and therefore if he make his Election to pay it to the second Feoffee, he ought to be well apprifed of the faid Feoffment; but the safest Way is to pay

it to the first Feoffce, or his Heirs.

A. enfeoffs B. on Condition, that if he pay to L to his Executors and Affigns, within three Years next ensuing, then, &c. the Feoffee hath Issue three Sons, whom he makes his Executors, and dies before the Day of Payment; the Ordinary commits Letters of Administration to 7. S. durante minoritate of the Executors. It was the Opinion of Dyer, Not Cafe to That the furest Way was for A. to pay the Paythe Mort-Money to the Executors, for the Administra- gage Money tor in fuch Cafe, is but a Bailiff or Receiver nistrator, duto the Executors, and shall be accountable to rance minorithem; fo Harpur, per Manwood, if the Money be paid to one of the Executors it is sufficient. and the Monies to be paid on this Conditional Feoffment, are as a Sum in Gross, and not in the Nature of a Debt, and omnes concesser. 4 Leon. 100.

A Condition to pay to the Mortgagee, his Where the Heirs or Assigns, then the Mortgage shall be to be paid to woid; the Mortgagee died, and the Money the Heir, and was paid to the Executors, and it was ad- not the Exejudged to be no Performance of the Condi-cutor. tion, for the Executor was not named, and the Money ought to be paid to the Heir, who shall have the Land, if the Money were unpaid, and not the Executor. I Brownl. 64.

Alfton and Walker's Cafe.

To the land

But further to illustrate this Point, viz. where, and in what Cases, the Mortgage-Money shall be paid to the Heir, or Executor, or to whom, we shall here add the fol-

lowing Cales.

A forfeited Mortgage in Fee, decreed to be Personal Executor, and not to the Heir.

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Hicks's Cafe, which was Term. Mich. 1686. Vernon 412, where a Man had by his Will, devised particular Legacies to his Executors, Estate, and to as he had likewise to his Heir; and the belong to the Question was, Whether the Heir, or the Executor, (there being no Defect of Assets) should have some Mortgages in Fee made to Vde post Cap. the Testator, that had been forfeited in his Life-Time: And the Court decreed in Favour of the Executor; and afterwards, on a Re-hearing, confirm'd the Decree, and yet admitted as to the Circumstances of that Case. That much might be faid in Behalf of the Heir; but fince it had been often very folemnly fettled, That all Mortgages should be look'd on as Part of the Personal Estate. and that it was now grown the established Rule of the Court, it was not fit to alter it, in order to accommodate one particular Case

Vernon, 170. and 412.

de la

I Chan, Rep. 283.

In the Argument of this Case, was cited on the Behalf of the Heir, the Case of Turner and Crane in this Court, which was Term. Pasch. 1682. where an old forfeited Mortgage of a Copyhold, was decreed to the Heir, vide infra. But on the other Side, were cited the Case of Baker and Thornbury, fettled in the Lord Nottingbam's Time, wherein the Cafe of an old forfeited Mortgage in Fee, tho' the Money by the Provisoe was made payable to the Heir, yet it was decreed to be Part of the Personal Estate: And the Case of Noy and Ellis, where, tho the Mortgageor would not redeem, yet the Land

Land was decreed to the Executor of the 2 Chan. Rep.

Mortgagee, against his Heir.

But fee the Case of Cotton, vers. Iles, in Vernon 271. where the Case is thus put. A Mortgagee in Fee, enters for a Forfeiture, A Purchafor and after seven Years Enjoyment, absolute- of a Mortgaly sells the Land to J. S. and his Heirs. Et gee in Fee in per Cur'. The Estate shall not be look'd on dyes, it shall to be a Mortgage in the Hands of J. S. the go to his Heir. Purchasor, so as to make it Part of his Perfonal Estate; but it shall go as an Estate Real, for the Benefit of his Heir.

Yet in some Cases the Mortgage-Money Mortgageshall be paid to neither the Heir or Execu- Money paid tor; as in the Case of Brent, vers. Best, & to Legarees, and apportioaliis, Mich. 1682. Vernon, 69, 70. where ned. Copyhold Lands being devised to A. in Truft, to pay Mortgages in the first Place, and then Legacies, he mortgages the same further, to raise Money to pay other Debts of the Testator; and decreed, That such new Mortgage shall be first paid. And the said Lands being devised first to the said A. for Life, Remainder to B. in Fee, 'twas further decreed, That B. should have his proportionable Part of the Redemption-Money. And the ordinary Rule of the Court in fuch Rule of ap-Case, was said to be, That one Third of the portioning Money should be paid to the Tenant for Life, and the two Thirds, Residue, to the Remainder Man. Vernon, 69, 70.

A Feme Mortgagee in Fee of a Copybold, marries and dies, living the Hufband. Quere if the Husband, as Administrator to the Wife, or her Heir, shall have the Money, there being no Covenant in the Deed to pay

it. Vernon 170.

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the Payment.

And yet in the Case of Freehold-Lands, and Terms for Years, &c. it shall, without Question, be paid to the Husband. Vide

ante, &cc.

Rules of Payment on Redemption. If a Mortgagee lends more Money to the Mortgageor on Bond, the Mortgageor shall not Redeem, without paying the Bond Debt as well as the Mortgage-Debt. Nor shall the Heir of the Mortgageor Redeem, without paying off both Debts. See the Cases of Baxter, vers. Manning. Vernon 244, and Shuttleworth vers. Laywick, ibid. 245. So where a Man has two Mortgages, and one is desective, if the Heir will Redeem, he must take both. See 2 Chan. Rep. 23. 164. But these Matters touching Redemptions, will more properly be treated of in Chap. 13, and 14.

CHAP. III.

By, and to whom the Money is to be paid, or tendered. Where a Condition descends to the Heir, he may pay or tender the Money. Tender made by Executors. Time of Tender. How, and to whom to be tendered. Where the Guardian may tender. Of Tender and Resusal if yet the Debt remaineth. Money to be tendered to the Person of the Feosfee, and why. Where, and in what Cases, Notice must be given of the Payment of the Money. A Daughter pays the Money, and then a Son is born. Rules of Tender, Request, Notice, Time, Place, and Manner of Payments.

Tender, &c.

A Feoffment on Condition, that the Feoffor shall pay such a Sum, at such a Day; though the Feoffor die before the Day of Pay:

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Payment, vet if his Heir pay the Money at the Day to the Feoffee, or tender him the Money, and the Feoffee refuseth to receive it, then may the Heir enter, though the Condition doth not make Mention of any Where the Payment by the Heir. 1/1, Because there is Condition dea Day limited, and the Heir comes within Heir, he may the Time limited by the Condition, otherwise pay the Mohe could not do it. 2dly, Because the Con-ney. dition descends to the Heir, and therefore the Law that gives him an Interest in the Condition, giveth him an Ability to perform it. 3dly, The Intent and true Meaning of the Condition shall be performed, and the Executor or Administrator of the Mortgageor, may tender at the Day; and if the Feoffee refuseth, the Heir may enter, for the Executor represents the Person of the Testator; and when the Executor makes the Ten- Tender made der, and the Feoffee refuseth, though the by Executors. Heir be a third Son, yet he is no Stranger, but he and the Executors are also Privies in Law.

Feoffment on Condition, that if the Feoffor pay a certain Sum of Money to the Feoffee. then it shall be lawful to the Feoffor and his Heirs, to Re-enters if the Feoffor die before Payment made, the Tender by the Heir is void; for it's to be construed, if the Feoffor during his Life, pay, and when the Feoffor dies, the Time of the Tender is past.

As to the Time of Tender observe, though a convenient Time before Sun-fet be the laft Time given the Feoffor to tender; yet if he tender it to the Person of the Mortgagee at any Time of the Day of Payment, and he refufeth it, the Condition is faved for that Time. If the Mortgagee die, his Heir within 14 Years

Time of Ten-How, and to whom to be tendered.

Where the Guardian may tender.

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14 Years of Age, the Guardian in Socage may tender in the Name of the Heir, because he hath an Interest as Guardian in Socage; where the Mother may tender the Money in the Name of the Infant her Son, to perform a Condition of Redemption without a special Command or Agreement; but if a Stranger tender the Money to the Infant, he is not bound to receive it; but if any Stranger in the Name of the Mortgageor, or his Heir, (without his Consent or Privity) tender the Money, and the Mortgagee accepts it, this is a good Satisfaction, and the Mortgagee or his Heir agreeing thereunto, may re-enter into the Land.

In Ejectment it was found by special Verdict, that M. was seised, and made a Feoffment in Fee, upon Condition of Payment of Money, on the Part of the Feoffer, by Way of Mortgage, at a certain Day, before which Day M. died, his Son and Heir within Age, afterwards at the Day of Payment limited by the Mortgagee a Stranger, at the Instance and Request of the Mother of the Heir, tendered the Money to the Mortgagee in the Name of the Heir being within Age, who refused it. Per tot Cur. The same is not a sufficient Tender to redeem the Land according to the Mortgage, for it is found by diet faith not the Jury, that the Heir at the Time of the of what Age Tender, was within Age generally, and not the Heir was, particularly eight or ten Years old, &c. then was made to it might well stand with the Verdict, that the Heir at fuch Time, was of the Age of 18 or 19 Years, at which Age, he is by the Law out of the Ward of his Mother, or any other Prochein amy; in which Case it is prefumed in Law, that he hath Discretion to govern his

Special Verwhen Tender his own Affairs; and in this Case the Mother is but a Stranger, for the Law hath estranged the Mother from the Government of the Heir; but if the Jury had found that the Heir at the Time of the Tender, was of tender Age, (viz.) within the Age of 14 Years, the Tender had been good. I Leon. 34. Watkins and Allwick's Case.

Note, If the Feotfee refuse to receive, and the Feoffor enters, he hath no Remedy at Common Law to have the Money; but Chancery will relieve him. 1 Infl. 206, 208.

If lawful Tender be once refused, he which Tender and ought to tender the Money, is of this fully Refusal. quit and discharged for ever afterward, i. e. to make any fuch Tender; but if it were a Duty before, though the Feoffor enter by Force of the Condition, yet the Debt or Duty Yet the Debt remaineth; as if A. borrows an 100 l. of B. remaineth. and after mortgageth Land to B. upon Condition for Payment thereof, if A. tender the Money to B. and he refuseth it, A. may enter into the Land, and the Land is freed for ever of the Condition; but yet the Debt remaineth, and may be recovered by Action of Debt. But if A. (without any Loan, Debt or Duty preceding) enfeoff B. of Land, on Condition for Payment of 100 l. to B. in Nature of a Gratuity, or Gift; in that Cafe, if he tender the 100 l. to him according to the Condition, and he refuseth it, B. hath no Remedy therefore. 1 Infl. 209. b.

Seeing the Money is a Sum in Gross, and Money to be Collateral to the Title of the Land, the Feof- the Person of for must tender the Money to the Person of the Feoffee. the Feoffee, and it is not sufficient for him and why. to tender it upon the Land, aliter of Rent; but if the Feoffee be out of the Realm, be-

canfe the Feoffee is the Caufe that the Feoffer cannot tender the Money, the Feoffor shall enter into the Lands, as if he had duly tendered it according to the Condition. I helf. 210. b.

Notice must be given of the Payment

If a Man make a Feoffment in Fee upon Condition, if the Feoffor at any Time during his Life, pay to the Feoffee 20 1, at such a Where, and in Place, that then, &c. in this Cafe, the Feofwhat Cales, for must give Notice to the Feoffee when he will pay it, for without fuch Notice, the Tender will not be sufficient. 1 Infl. 211. of the Money. But it's a fure Thing for him that will make fuch Feoffment in Mortgage, to appoint a Special Place where the Money shall be paid, and then he may tender it there, and is not bound to feek the Person.

If a Man make a Feoffment of Lands on Condition, that if the Feoffor or his Heirs. pay to I. that he may re-enter, and dies, leaving a Daughter who pays the Money and enters, and then a Son is born, yet the Daughter shall retain the Lands, qui fentit onus, fentire debet commodum, 9 H.7. 35 Hob. 3.

If the had not paid the Money, the Land had been loft, and if the cannot retain the Land against the Son, she hath no Remedy for the Money, and by Payment the is as a Purchafor.

A Daughter pays the Money, and then a Son is Born.

der.

Rules of Ten- 1. As to Tender: The last Time is the most convenient, when the Money may be numbred before Sun-fet.

> 2. If Tender be made to the Mortgagee at any Time of the Day, and he refule it, the Condition is faved for ever.

2. If a Man tender more than he ought

to pay, it is good enough.

4. The

The Tender in Bags is good, if really there was to much ! It is the Part of the Mortgagee to number it. 5 Rep. 114. 6. Wade's Cafe.

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5. But a Tender at another (Time or) Place, A voluntary than appointed or agreed on, was fet afide. Deed subject This last Rule appears by the Case of Thorne, to a Power of Revocation vers. Newman, & Ux. Mich 25 Cdr. 2. as it on Tender of is in Nelfon's Chancery Reports, pag. 38. where a Shilling, the Bill was to fet aside a pretended volum- which was tary Conveyance, fet up by the Defendant, tendred, but which was made with a Power of Revoca- place appointtion upon the Tender of a Shilling, which ed; and therewas tendred accordingly, and at the fathe fore was fet Time he who tendred it, declared, That it afide by the Plaintiff, &c. was done with an Intent to revoke the faid who was a Deed; and that the fame (us 'tis pretended Morrgagee, by the Bill) was cancelled; But the Defen-and afterward dants pretending, That the Tender was not the Efface. maile at the Place appointed, they now fet up the faid Deed at Law; and because no Defence was made by the now Plaintiff at the Trial, he was Nonfeit. And for that the Plaintiff was a Purchaser of the Premiffes, first by a Morrgage of 500 L and afterwards by an absolute Assignment, in Consideration of 7001. more paid. Therefore he pray'd a Decree to fet aside the faid Deed. And 'twas decreed at the Rolls. Mich. 25 Car. 2. That in Regard the faid Soms had been paid by the Plaintiff, and that he had new built and repaired the House, he ought in Equity to enjoy the fame against the Defendants, and all claiming under them, by the faid pretended Deed; and for that Purpose, the faid Deed to be fet alide against the Plaintiff.

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But the Defendants praying a Redemption of the Premisses upon Payment of the faid Sums of Money, with Interest, together with the Money laid out in building and repairing, it was ordered, That the Master should compute the same, and what Profits the Plaintiff, or any other Person for his Use, had received, and he to account for all wilful Spoils and Wastes done and (upon Payment of what was fo due) the Plaintiff should affign the Premisses to the Defendants. But in Default of Payment, the Plaintiff was to hold the Premisses against the Defendants, and all claiming under them by the said Deed. And upon an Appeal to the Lord Chancellor, this Decree was confirmed.

See also post. pag. 20. 21. other Cases about Tender. The Cases of Watkins and Assiring, and Winter and Loveday.

Rules of Request, or Demand.

To the Rules of Tender, Supra, we may well add the Rules of Common Law, touching Request and Notice, seeing they are generally observed in Equity also, especially in Cases of Mortgages, &c.

And first of Request, or Demand, viz.

1. Where Money is to be paid, or other Things to be done upon Request, there a precise Request must be made (and alledged;) except on Bonds to pay on Request. See Cumberbach's Reports, 361.

2. In all Cases where the Ground of the Suit is for a Debt, there both Law and Equity induce a Promise; and the Request 8

is not issuable, or Parcel of the Consideration. But where the Request makes it a Duty, the Request must be precisely alledged. So where the Suit is for a collateral Matter and not a Debt. &c.

3. Where a Request is to be shewn or set forth in the Bill, there it is material and traversable; and therefore the Time and Place

thereof must be shewn, &c.

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Wherever Notice is to be given or Request or Demand to be made to produce and warrant an Action or Suit, the same must be set forth, and averred to be made or done accordingly. See 6 Mod. 227, 252, &c. Instit. Leg. 328.

Secondly, as to Notice, observe,

1. Where the Matter to be done rests in the equal Knowledge of the Parties equally, there no Notice is necessary from the one to the other.

2. But where it is more in the Knowledge of him to whom it is to be done, there it is necessary he give Notice to the other of what is to be done.

3. Where a Duty arises upon a private Act of the Plaintiff, there Notice must be given of such Act done before a Suit be brought thereon; for else the Breach may be so private, that the Defendant by no Possibility can have Knowledge thereof without such Notice.

4. Where a Thing is to be done by a Stranger, and lyes as much in the Knowledge of the Defendant, as of the Plaintiff, the Plaintiff is not bound to give Notice to the Defendant

between the Parties themselves, Notice is

2 Rules of Notice.

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to be given to the Party who is to make the Payment upon an Act to be done by the other to whom the Payment is to be made.

6. But otherwise, where the Act is to be done by a Stranger; for there he is to take

Notice at his peril.

7. Also Note, That on Contracts or Agreements executed (as where you promife to pay me 20 l. in Recompence of a House I have built at your Request) no Notice is necessary.

8. But in Contracts Executory, as where all or Part of the Thing agreed upon is to come; as if you shall bring me so much Corn, build me a House, &c. by such a Day, I will pap you so much Money, or the like: In this Case Notice must be given, that you have deliver'd the Corn, built the House, &c. See 3 Bulfer. 34. 5 Co. 96. Cro. Fac. 207.

Touching the Time, Place, and Manner of Tenders, and Payments of Money, Notice and Performance of Conditions in Mortgages. See cap. 4. and Note there a Divertity when a Thing is to be done, or Notice given to the

Party, and when to a Stranger.

And further (as to Subsequent Mortgagees without Notice, buying in former Incumbran-

ces.)

Note the Case of Edmonds verfus Povey, & gages without alios, Mich 1683. Vernon 187. where the Cafe was, That a first, second, and third Montgagee had all lent their Money without No. tice, Ga. The third Mortgagee hearing of the two former Securities, buys in the first In-

cumbrance, viz. a Judgment that was fatisfyd; and it was firongly infifted at the Bar: that the' this Trade of buying in Incumbrances had been formerly countenanced here. vet that in Truth it was a Thing against

Conscience.

Time, Place, and Manner of Payments,

Notice of Incombrances,

A third Mort. Notice, burs in the first Incumbrance. being a fatisfy'd Judgment, he shall have the Benefit of it.

Confeience, and contradictory to many eftablished Rules of Law and Equity. - But after long Debate, the Lord Keeper told them, That he wondred the Counsel laid their Shoulders to a Point that had been fo long fince fettled and received as the conftant Course of the Court of Chancery; that 'twas true there had been firong Arguments used against the Unreasonableness of this Practice, and that there might be likewise strong Reasons brought for the maintaining of it, and fo 'twas at first a Case very disputable; but it being once solemnly fettled as it was in the Cafe of * March and Lee, he would not now fuffer * 1 Chen. the Point to be stirred. And his Lordship Rep. 162. further declar'd. That he would not willingly change the Rule in this Case that had so long prevailed, --- But it may be he might do so where he found a Man designing a Fraud, and thought to make a Trade of cozening by the Rules of the Court.

Then Serjeant Pemberton moved, That as to Notice of Inthe Point of Notice, he supposed was meant, cumbrances, That a Man who buys in a prior Incumbrance must do it without Notice of the middle Incumbrance, not only when he lent his Money, but also at the Time when he bought in the prior Incumbrance. Sed non

allocatur.

Note the Case of Finch, Plaintiff, against On a College the Earl of Salifbury, &c. Defendants, Paf. 27. Leafe. Car. 2. Nelson's Rep. 212. where an Affignee of a College Leafe has Notice of a former Charge or Incumbrance he shall be obliged to make it good on taking a new Leafe. Note also the Case of Luckin vers. Rushworth ibid. 392. touching College Leafes tho' affign'd and renewed.

renewed, yet made subject to the Payment

of former Debts. See the Cafe infra.

See also the Case of Green and Hill Plaintiffs, and Gardner, Verdon, &c. Defendants, Trin. 27 Car. 2. Nelson 225, where A. devises Lands to his Brother, charged with the Payment of 600 L at fuch a 1 ime, and that in Default of Payment, the Lands should go to another; the Brother, and the other Devisee joined in a Mortgage of those Lands, and the Mortgagee fuffer'd the Brother and Mortgageor to continue in Possession, and to fell Timber: fo that there was not sufficient to fatisfy the faid 600 l. and the Mortgage. - And twas decreed. That the 600 l. should be paid by the Mortgageor, before the Mortgage redeem'd, because the Mortgageor had Notice of the Will. And this, it seems, affects his Personal Estate.

When Notice shall affect the Mortgageor's or Purchafor's Perfonal Effate.

And to the like Purpose is the Case of Chelfam & Ux. verf. Auftin and Smith, &c. Mich. 29 Car. 2. in Nelfon's Chancery Reports, 228. where a Lease being made for a long Term, rendring Rent, the Lessee entred and granted an Annuity out of it, the Annuity being in Arrear, the Leffee confess'd a Judgment to the Grantee of the Annuity; and the Rent being in Arrear, the Lessor entred for a Forfeiture in Nonpayment, and made a new Leafe to another when both of them had Se. set aside. Notice of the said Annuity and Judgment; and therefore it was decreed. That the new Leafe should be set aside, and the original Leafe revived. And vide ibid. 320. in the Case of Fleming versus Page, &c. a Purchase made pendente lite, and after full Notice of a Trust (or Incumbrance) was set aside in Equity: And also the Case of Mum perf. the Eaft-

New Leafes.

East India Company, ibid. 298. a Sale of Stock in that Company, when the Buyer had Notice that it was not the Stock of the Selfer, was decreed to be a fraudulent and illegal Purchales action on to nodished

So in the Case of Aldridge versus Dukes Mich. 31 Car. 2. A subsequent Lease made to one by way of Mortgage, who had Notice of a prior Leafe made for raifing Childrens Portions was fet afide in Equity. See Nellon's Rep. 439. 440.

Sir William Luckin, Bart. Plaintiff, John Rushworth, Esq. and Bridget, Eliz. Anne. Dorothy, Mary, and Hannah, Sifters and Cobeirs of Edward Pinchon, deceased, Son and Heir of John Pinchon, Efg; deceased, Defendants.

John Pinchon, the Father of Edward, and Luckin Barti his faid fix Sifters (against whom the Suit verf. Rushwas now revived after the faid Edward's worth, &c. Death) being posses'd of several College Leafes, Nelfon's Rep. and of feveral other Lands, Freehold and 392. Copyhold, and being indebted to the Plaintiff's Father in the Sum of 4000 l. did, inter al', mortgage the faid College Leafes to the faid Plaintiff's Father for Repayment of the same, and Interest; and as a further Security entred into a Statute for that Purpole. Afterwards John Pinchon made his Will, and directed. That his College Leafes should from Time to Time be renewed by bis Executors, and that fo much of his Estate as could be kept entire, so as the Revenue thereof might be better upheld; and devised his Freehold and Copyhold Lands to the Defendant Rullworth, &c. in Trust to pay his Debts, and to other Ules July.

Uses in the Will, and dy'd much indebted:
And there being some other Incumbrances on
Part of the Freehold and Copyhold Lands thus
mortgaged to the Plaintiff's said Father, he
entred and got Possession of so much as he
could.

Note,

A Property

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But the Defendant Rushworth, to obstruct him from baving the Debt satisfy'd, renewed one of the College Leases in his own Name, but in Trust for the Children of the said John Pinchon (as he pretended) And so likewise every four Years he renewed all the said College Leases which were first in Mortgage to the said Plaintiss's Father, as also the other College Leases; and the Old Leases being expired, he entred by Virtue of the new Leases, and brought an Ejectment, and recovered the Possession from the now Plaintiss, who claims the same by his said Father's Will, Dated in 1659.

But the Defendant R. pretends, That the Leases assign'd by the said John Pinchon to the Plaintiff's Father, were sufficient to discharge the said Debt of 4000 l. and that he might have levy'd the same before the Expiration thereof, he knowing when they would be determin'd, and therefore claimed the renewed Leases for the Benefit of the Children

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The Counsel for the Plaintiff insisted, That the 'the said Mortgages were renewed after the Date of the Will of J. P. yet his said Will did sufficiently operate on those Leases so as to subject them to the Payment of his Debts.

On the other Side 'twas argu'd, That the Will did not, nor could operate on those Leases, because they were expired by Effux of Time; and that therefore the whole Term which

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which was in Mortgage was run out, and that the Plaintiff had no more R ght against the Defendant, than he had against the

College.

But the Court declared, That fince the Debt was secured by a Statute (or Judgment) as well as by a Mortgage of the College Leases, the said Debt ought to be satisfy'd out of all the Estate of the Debtor both in Law and Equity; and that the Renewing of the faid Leafes in the Name of the Defendant Rushworth (Budgell) ought not to shelter or proted the Estate against the just Debt due to the Plaintiff; For tho' his Mortgage did bind but a particular Part of the Estate yet the Statute (Judgment) bound the whole; and the by the Will the College Leafes were not made fubject to the Payment of the Testator's Debts. as the Freeholds and Copyholds were, yet the faid Debt of 4000 l. ought to be made good out of the whole Estate.

Therefore 'twas decreed, That the Plaintiff allowing the feveral Fines, Gratuities and Charges which the Defendant has expended, and the Rents paid to the College, and Moneys paid for the renewing of the Leafes, &c. should be let into the Benefit of the said renewed Leafes, and that the Defendant should affign and convey them to him, till fatisfy'd the faid 4000l. The ar bigged mond stan if

Company of the Compan Series Common Law, if the Condition

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CHAP. IV.

To whom the Mortgage Money shall be decreed. How it is at Common Law. Where there is no Mention made of Heirs or Executors, to whom it should be paid. Where Election is to pay it to the Heir or to the Executor. Where the Moitgage Money (though of an Estate of Inberitance) hall be decreed to the Executor. and not to the Heir. Where Mortgage Money to be accounted as Part of the Personal Estate. Interpleader to a Bill, to whom be should pay the Money to the Heir or Executor. Money on a Mortgage in Fee decreed to the Executor. Mortgage Money, Affets in the Hands of the Heir. Who may pay the Money and perform the Condition. Tender for an Infant by one who was not Guardian. What is a sufficient tender or not. When the Condition shall be said to be performed. Diversity, where a Thing is to be done to the Party, and where to a Stranger. Covinous Payment. In what Cases an Entry may be made into the Land, though the Money be paid and accepted.

Mortgage
Money is
payable, i. e.
To the Heir
or Executor.
See before
6. 1. and 2.

Oncerning this, there hath been Variety of Opinions in our Books, sometimes it hath been decreed to the Heir, and sometimes to the Executors according to the Penning of the Proviso, and the Intent of the Parties.

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By the Common Law, if the Condition or Defeasance of a Mortgage of Inheritance be so penned, that there is no Mention of Heirs or Executors, to whom the Money should be paid; in that Case the Money ought

ought to be paid to the Executor, in Regard that the Money came first out of the Perfonal Estate: But if the Defeasance appoint the Money to be paid to the Heir or Executor disjunctively, there by the Common Law Election to if the Mortgageor pay the Money precisely the Heir or at the Day, he may elect to pay it to which Executor. of them he pleaseth; but where the Day is past, and the Mortgage forseited, all Election is gone at Law, for in Law there is no Redemption; then when the Case is reduced to an Equity of Redemption, the Payment is not to be at the Election of the Mortgageor, for then he may defer the Payment or compound it: Therefore in this Case aguitas fequitur legem, and the Law gives the Executor the Money, where no Person is named; and in Reason and Equity, the Right of the Mortgagee is to the Money, and his Right to the Land is only as Security for the Money; and after Payment or Tender, the Law keeps a Trust for the Mortgageor which the Heir of the Mortgagee is bound to execute. Thornborough and Baker's Case. Anno Car. 2.

It was ruled in Tilly and Egerton's Cafe, where the That the Heir should have the Mortgage Heir shall Money, there being no Defect of Asiets in have the Mortgage the Executor's Hands: If it be payable by Money. the Condition to the Heirs or Assigns of the Mortgageor, the Heir shall have the Money: If there be a Bond for Payment of the Mortgage Money, that goes to the Executors. Ch. Cafes 88. Smith and Smolt, vide

1 Rep. Ch. 181.

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In Standley and Mandflye's Cafe, The Testator lent 1400 l. to P. and took a Mortgage of Lands to him and his Heirs in Fee, de-D 3 feafanced

and he syan on E Tanks with

feafanced to pay the faid Mortgage Money to him, his Executors or Assigns. The Court decreed, That the faid Mortgage Money belong'd to the Executor and not to the Heir. r Rep. in Ch. 125. See my Lord Gorge and Dillington's Cafe, par was respectively and to

Mortgage Monevaccounted as part of the Personal E-Hate, and why

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A Mortgage in Fee, and the Money made payable to the Executors or Administrators, and a Covenant to pay the Money accordingly, is to be accounted as Part of the Personal Eftate: Car. 2. I and made you be moing as

Tates and Hooker's Cafe, Car. 2.

In a Mortgage for Years, and a Judgment for Performance of Covenants, it was decreed to the Executor, and accounted as Part of the Testator's Personal Estate, he having given by Will his real Estate to his Heir, and the rather for that it was not in the Power of the Heir to discharge the Judgment or the Mortgage Money, by the Proviso being made payable to the Executor, and not to the Heir: And the Testator by his Will charged the Lands devised to his Heir to Supply the Deficiency, if the Perfonal Estate was not sufficient; and if he had not taken the Mortgages to have been Part of the Personal Estate, he would have supplied them out of the Mortgages. A emilion list.

But in Turner's Cafe, 2 Rep. in Chan. 154. The Heir is decreed to have Right to a Mortgage in Fee, and not the Executor. the Mortgage Money, that goes tashing ishiv

acorder Ch. Coffe 88. Smith and Smelt, Reproductive to Mortgage Charles and Charles

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fisted lent 1 dood to P and tooks Marigage of Landard blut and this Heirs in Fee, des feafanced

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6 Novemb. 1667.

Date of Mills of Monday

Owen, Plaintiff, White and others, Defendants.

The Bill was preferred by a Mortgageor against the Heir of the Mortgagee and his Executors, to whom the Devisee had devised all his Mortgages, that he might pay the Money, and have a Reconveyance, and the Defendant inter-pleaded to whom he Inter-plead. should pay the Money: Decreed, that the Executors and Executors (Devisees) shall have the whole not the Heir. Money, and the Heir decreed to join in the Reconveyance. hun may not tenden i

Turner's Cafe.

Mortgage was made in Fee, which de Money on a scended to the Heir at Law, and the Money Fee to the ten Years fince paid to him. The Executere tor of the Mortgagee prefers his Bill, and had a Decree for the Money, but without Interest, though the Proviso was to pay to the Feoffee, his Heirs or Executors; yet when the Day is past, it is as much as if no Day had been expressed, and then Equity shall follow and appoint it to the Executors. 2 Ventr. 348.

And it is faid in 2 Ventr. 350, 351. That Money to be paid on a Mortgage in Fee, whether forfeit or not, before the Death of the Mortgagee, shall go to the Executor. 2. vide Sir Tho. Littleton's Cafe.

In 3 Leon, A Case was put, A Man mortgageth his Lands to pay to the Mortgagee, his Heirs, Executors, or Affigns a restain

The Money paid to the Heir within Age, as Executor, and not as Heir, and shall be Assets.

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Sum of Money at a Day certain; the Mortgagee dies, and makes his Heir within Age,
h s Executor, and the Mortgageor pays the
Money at the Day to the Heir. Per Cur.
The same shall be Affets in the Hands of
the Heir as Executor, and that he has not
the Money as Heir, and he shall be charg'd
with it within Age. 2 Leon. 22.

If a Man mortgage his Land to W. upon Condition, that if the Mortgageor and J. S. pay 20 l. to the Mortgagee such a Day, that then he shall re-enter, and the Mortgageor dies before the Day; in this Case J. S. may pay the Money and perform the Condition, otherwise it is, whilst the Mortgageor doth live; for in that Time J. S. alone without him may not tender it, and if he do, this Tender is no Performance of the Condition, 1 Infl. 219.

Tenden for an Infant by one who was not Guardian. It was adjudged in Watkins and Ashwick's Case. That where one tendred Money upon a Mortgage for an Insant who was not Guardian, nor was to have any Interest in the Land, that it was adjudged a void Tender. Cr. Eliz, 132. vide supra.

Winter and Loveday's Cafe,

Another Cafe

Winter by Deed indented, mortgaged to Loveday, a certain Lease on Condition to pay 400 l to Loveday at a Day certain, at the Porch of such a Church; at the Day of Payment one Cornwallis sent unto Loveday to know, if Loveday would receive the Money which Winter owed to him at his House, who answer'd he was content, and he came there, and the Money was told and deliver'd in Bags to Loveday, but asterwards some Contention

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THE BUILDING

tention did arise between Winter and Loveday for certain Writings, for which Caufe Cornwallis faid, That if they would not agree between them, they should not have his Money; whereupon Winter requested Cornwallis, that he might have the Money to carry to the faid Porch of the faid Parish-Church, who was contented, and there Loveday came to receive it, and Winter would not pay it. Per Cur. Here is not any Payment, for it was not the Money of Winter but of Cornwallis, as appeared by Winter's Words; also Winter requested Cornwallis, that he might have the Money to carry to the Porch; so that it appears it was not Winter's Money, and this no Sufficient Tender. 2 Leon. 213.

When the Condition shall be said to be performed or not.

In most Cases, when by a Condition a Diversity Thing is to be done one Way, and to be done to the Party to the Condition himself and not a Stranger, and he doth accept it and and where to ther Way; this is a good Performance of the a Stranger. Condition, volenti non fit injuria. But if the Thing be to be done to a Stranger, and one that is no Party to the Condition, if it be done in any other Manner, and he accept thereof; this is no Performance of the Condition. If the Mortgageor pay the Money according to the Condition, and afterwards the Mortgagee delivers it to the Mortgageor as his own Money, the Condition is performed, and the Mortgage discharged notwithstanding. But

If a Feoffment be made to J. S. upon Condition, that if the Feoffor pay to the Execu-

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Where an Entry may be, tho' the Money is paid and accepted.

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tors or Administrators of 7. S. tol. the Feoffment shall be void, and J. S. die, and the roll is paid to the Executor of J. S. according to the Condition; but is covinously done, i.e. there is a private Agreement that the Feoffor shall have all or Part of his Money again; this Payment is no good Performance of the Condition, to fetch the Lands out of the Hands of the Heir, but it ought to be a real, full and effectual Payment, 5 Rev. 96. 1 Jac. 207. As to covinous and fraudulent Leafes, Charges, &c. Vide ante Chap. 3.

One makes a Feoffment to me on Condition, that if he pay me 10 l. fuch a Day, the Feoffment shall be void, and he doth not pay me at the Day, but doth die, and afterwards by Agreement between his Heir and me he doth pay me the 10 L and I receive and accept it, and thereupon I suffer him to enter and hold the Land; in this Case the Condition is not performed, but I may enter upon him and oust him not with standing; but a Relief may be in Equity. Vide Winter and Loveday's Cafe, Supra. ther Way: I will sa good

Condition, volenti non fit injuria. But if the Thing be to be done to a Stranger, and one that is no Party to the Condition, if it be, in any other Manner and he secent

thereof a this is no Ferlomanne of the Conchitians II the Mortgagen pay the Money eccepting to the Constitlon, and afterwards

the Mortegges delivers it to the Mortgageur A PV HOD Cooks, the Condition is bestormed, and the Mongage additioned notwith-

If a Feoffment be made to 7 2 upon Conforces that it the beging may to the Exceptors ention:

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What Alls done by the Mortgageor, before the Day of Payment, and Performance of the Condition, shall be good or not. Lease by Estoppel, where it shall take Place before an Assignment. Where Acceptance of Collateral Satisfaction by the Mortgagee Shall bind bim. Of Acceptance in full Satisfaction. Of Payment by Way of Retainer. What Payment shall be a good Discharge of the Mortgage. Provifo, not to meddle with the affual Possession till Default of Payment. What Interest passeth. What amounts to a Disseisin, or not. Where the Wife of the Mortgagee shall have Dower, or not. Abrement Money, because the other has

F A. mortgage Lands to B. in Fee, upon Condition, on Payment of 10 l. to re-enter, and afterwards A. before the Day of Payment, he being in Possession, makes a Leafe for Years by Indenture, and afterwards performs the Condition, this shall be a good Lease against himself by Way of Estoppel, Affignment, although he had nothing in the Land at the Leafe by Time of the Demile, 1 Rolls Abridg. 874. Omelanghlad and Hood's Cafe. And in this Case, if A. after Performance of the Condition, makes a Feoffment to D. he shall be bound and estopped to avoid the Lease as well as A. himself, for that he claims under A. that was estopped. Ibid. 876.
Windbam, in the Case of Whaley and An-

derfon, faid, he had known that where one mortgageth Lands, and afterwards leafeth by Estoppel, and after procureth the Money to

be repaid, and Assignment to be made: It was held, That the Lease by Estoppel, would first take Place before the Assignment, which Twisden remembred to be the Case of a poor Man in Hackney.

Where Acceptance of a Collateral Satisfaction by the Mortgagee, shall bind bim.

If the Feoffor in Mortgage, pay to the Feoffee an Horse, or a Cup of Silver, or a Gold Ring, or any fuch other Thing, in full Satisfaction of the Money, and the other receives it; this is good enough, and as strong as if he had received the Sum of Money, though the Horse, or Ring, were not of the twentieth Part of the Value of the Sum of Money, because the other hath accepted it in full Satisfaction. Litt. Self. 344. So if the Feoffee accept of a Statute, or Bond in Satiffaction of the Money, it is good Satisfaction. Where the Condition is for Payment of 201. the Obligor, or Feoffor, cannot at the Time appointed, pay a lesser Sum in Satisfaction of the whole, because it is apparent the leffer Sum of Money cannot be a Satisfaction of a greater : But if the Obligee, or Feoffee, do, at the Day receive Part, and thereof make an Acquittance under his Seal, in full Satisfaction of the whole, it is sufficient, by Reason the Deed amounteth to an Acquittance of the whole.

Acceptance in full Satisfaction.

> If the Obligor, or Feoffer, pay a leffer Sum of Money, either before the Day, or at another Place than is limited by the Condition, and the Obligee, or Feoffee receiveth it, this is a good Satisfaction, ord after procured as a

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If the Obligor, or Feoffor, be bound to pay 100 Marks at a certain Day, and at the Day the Parties do account together, and for that the Feoffee, or Obligee, did owe 20 1. to the Obligor, or Feoffor, that Sum is allowed, and the Residue of the 100 Marks paid: This Payment by is a good Satisfaction, and yet the 20 l. was Way of Rea Thing in Action, and no Payment was made thereof, but by Way of Retainer or Discharge. I Inft. 213. b.

In Vere and Langley's Cafe. Payment of & L. Mortgage diffor 5000 l. is a Discharge of the Whole and charged, by a Discharge as to one, is a Discharge to all the Payment And Hales, Chief Justice, said, He knew a Mortgage of 6000 l. discharged, by Payment of 500 l. 1 Keb. 788.

Leader State

What Payment shall be a good Discharge of the Mortgage. Vide supra.

And English Clady English

Account for 100 l. Jury find Bartholomew the Defendant paid the 100 l. to Hewer the Plaintiff, in Redemption of a Mortgage, and he commanded his Servant to put it in his Closet, and he did so; and afterwards the Defendant demanded of the Plaintiff certain Evidences and Bonds, which he refused to deliver; then the Defendant required he might have his Money again, which he then had paid, and the Plaintiff thereupon commanded his Servant, 7. C. that he should fetch back the faid 100 l. ad redeliberand' to the predid' (Defendant.) 7. S. did fetch the Money. and did pour it forth upon the Table; eid! (Defend.) ed intentione ut idem (Defendens) Juas centum Libras pred', quas idem (Def.) to the Plaintiff had paid, reciperet in presentia of

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the Plaintiff, and the Plaintiff did then, and there, Will the Defendant ad recipiend, the aforesaid 100 l. per ipsum Def. presat' Quer' ut presentur solut' quas 100 l. idem (Def.) I fi

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Per Cur', This Payment was a good Discharge of the Mortgage; and although he afterwards required it again as his own Money, yet it shall not avoid that which was absolutely paid; but the Mortgage was absolutely discharged, and the Money was the Plaintiff's own Money. And although he delivered it to the Defendant as his own, (not knowing the Law therein) supposing it to be no Payment, yet in Regard he did not give it otherwise, nor upon other Consideration, the Defendant received it as the Plaintiff's Money, and is accountable for it. Cro. Jac. 614. Hewer and Bartbolomew.

Powsley and Blackman.

Fobn C. was seised of Lands in Fee, and by Indenture Inrolled, bargained and fold the fame to William Perryman, in Fee for 300 l. with a Proviso, that if he paid to the said William Perryman 300 l. in this Manner (viz.) &c. then the Bargain and Sale should be void. Proviso etiam & agreatum fuit between the faid Parties, that the faid William Perryman, his Heirs and Affigus, should not intermeddle with the actual Possession of the Premisses, or Perception of the Rents and Profits thereof, until Default of Payment were made of the faid Sums, or any Part thereof. William Perryman did not enter into the faid Tenements. John C. before any Days

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Days of Payment, Let the Land to W. D. for fix Years, rendering Rent unto him, and died: The Lessee enters, and claimed nothing but the said Term. W. D. paid the Rent yearly to John C. and at the End of the Term, furrenders the faid Tenements to John C. Afterwards William Perryman made his Will, and devised these Tenements to Richard Perryman, Leffor of the Plaintiff. ...

- 1. Q. What Interest John C. the Bargainer Provise, Not had by this Agreement with the Bargainee, to intermedthat he should not intermeddle with the Te- actual Possesnements till Default of Payment? Whether fion, till Dehe was Lessee for so many Years, or only in fault. as Tenant at Will or Sufferance; for it is not What Interest a Covenant or Agreement with the Bargainee, that he shall enjoy it during those Years, which had been a Leafe, but he is only Tenant at Will of the Bargainee, or Tenant at Sufferance.
- 2. Q. Whether his making a Leafe for Years, and the Leffee entring and paying the Rent, and claiming nothing but the Term, and after at the End of the Term, yielding up the Possession to the Bargainor. shall be a Disseisin; and if it be a Disseisin, whether it is not purged by the Reentry of the Bargainor, and occupying it in statu quo prins, and reducing the Inheritance to the Bargaince, fo as he was not out of Possession, and so his Will thereof be good. Per Cur', when the Bargainor entred, as shall be conceived by the Words, yielding up the Tenements at the End of the Term, if he

were a Diffeifor before, (as they did not agree that he was, because neither the Lessor

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nor Lessee intended to make any Disseising the Lessee claiming but his Term) it was only a Differfin in the Leffee for Years; and when the Term being expired, the Bargainor re-enters, that purgeth the Diffeifin, ged by Entry. and the Bargainor is in as he was before, and the Inheritance is vested in the Bargainee. and his Will shall be good. Otherwise it would be a mischievous Case in many Assurances, where the Mortgageor being in upon Condition to pay at the End of the Year. and in the Interim that the Mortgagee shall not meddle, who makes a Lease for Half a Year, and after re-enters before the Day of Payment, that he should be a Disseifor against his own Intent, and the Intent of the Bargainee, that the Bargainee shall be said to be out of Possession, so as he cannot make a Bargain and Sale at his Will; by this Means, many Affurances would be deftroyed. Cro. Jac, 654. Powfley and Blackman. Vide this Case cited, 4 Mod. 48.

Upon a Mortgage of Land, if it be redeemed, the Wife of the Mortgagee shall not have Dower. And if a Husband takes a Fine. sur Conusance de droit come ceo, and renders again, although it was once the Husbands, yet his Wife shall not have Dower; for it is in him and out of him, quali uno flatu, and by one and the same Act.

A. S. Seised in Fee, by Indenture inrolled, bargains and fells to the Husband for 120 L in Confideration he shall Re-demise to him and his Wife, for their Lives, under a Pepper-Corn Rent; and with a Condition, that if he paid the 120 l. at the End of 20 Years, the Bargain and Sale to be void. He Redemiseth accordingly and dies, his Wife brings

Where the Wife shall have Dower, or not.

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brings Dower. Though it be against Equity. and the Agreement of the Husband at the Time of the Purchase, That he should have it against the Lessees; for it was intended that they should have it Re-demised immediately to them as foon as they parted with it, and it is but in Nature of a Mortgage. Yet per Cur', by Law she ought to have Dower in this Cafe, for by the Bargain and Sale, the Land is vested in the Husband, and thereby his Wife intituled to have Dower. And when he re-demiseth it upon the former Redemise. Agreement, yet the Lessees are to receive it subject to their Title of Dower: And it was his Folly that he did not conjoin another with the Bargainee. This was agreed on by the Judges at Serjeants-Inn. Cro. Car. 190. Nash and Preston.

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Construction. Bargainee by Agreement, is not to take the Profits till Default of Payment, What Effore the Bargainer bath. What Time is sufficient to gain a Reputation, fo as to make Lands pafs as Parcel. Of Mortgages, as to Baron & Feme. Term mortgaged by the Baron & Feme, Survives to the Husband : And so Conditions hall survive to him. The Wife y Term mortgaged by the Husband, Wife dies, then be pays the Money and dies. Q. If his Executors shall have it by Forfeiture. Condition to pay on Mortgage, or to be void, it's at the Mortgageor's Election, Where the Condition of . a Bond for Performance of Covenants, extends to the Payment of the Mortgage Money, or not. Of special Covenants, Conditions and Agreements in Mortgages.

Vide Pousley and Blackman's Case, ut Supra.

of Mortgage, on Condition to pay certain feveral Sums yearly for fix Years enfuing. Sc. and it is covenanted and agreed between all the Parties, that the Bargainee shall not take any Profits of the Land until there be Default of some of the Payments aforesaid. This doth not make it a Lease at Will, because it is not that the Bargainor shall take the Profits, but only that the Bargainee shall not take them, which sounds in Covenant, and he is Tenant at Sufferance, and not Tenant at Will. I Rolls Abr. 849. Powsley and Blackman. Cro. Fac. 659.

Bargainee not to take the Profits, till Default of Payment; what Estate the Bargainor bath.

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Sir W. Green being seised in Fee of the Manors of Great Milton and Little Milton, and the reputed Manors of Great Chilworth and Little Chilworth, purchased 30 El. of Sir Will. Dormer, and of other Lands purchased, 1 Fac. which one Ives occupied together. till 3 fac. and then in Confideration of the Marriage of Sir Mich. Green his Son, with one M. Read, with whom he had 4500 l. covenants to stand seised of the said Manors of Great Milton and Little Milton, and of divers particular Closes by Name, in Chilworth, and of all his other Lands. Tenements and Hereditaments to the faid Manors appertaining or used, and occupied with them, to the Use of himself for Life, and after of such a Manor, and some of the Closes by Name, to the Use of Anne his Wife for her Jointure; and of other the particular Closes before-mentioned. to the Use of M. for her Life for her Jointure. and after the Decease of Sir Will. Anne and M. to the Use of the faid Sir Michael Green, and the Heirs Male of his Body, Remainder over. Afterwards Sir Will, and Sir Michael joined in a Mortgage, Bargain and Sale of the Manors of Milton and Chilworth, and all the Lands thereunto appertaining; or reputed as Part of the lame, or within the fame, and they levied a Fine by the Name of, &c. which Quantity comprised as well the Freehold as the Manors.

The Question was. Whether the Parcels of Land divided from the Manor by the Intail, and the Freehold Lands lately purchafed, should pass by this Mortgage? And the Lord Keeper, with Justice Jones, and Justice Hutton in Chancery, resolved, That the Lands intailed, which were Parcel of the · Manor. E 2

What Time is fufficient for the gaining a Reputation.

Manor, shall not be said to be severed from the Manor: For the Freehold never being fevered, but remaining entire in Sir W. Green. during his Life, shall pals as Parcel of the Manor at the Time of the Mortgage; and that the Freehold bought in and occupied with the Manor, although it was but two Years before the Mortgage, may pass, being faid and reputed Parcel, and by that Name. And the Fine is well enough guided by the Indenture for the Manors, and for the Freehold purchased, although they were not in rei veritate Parcel of the Manor; and a little Time is sufficient for the gaining a Reputation. Cro. Fac. 308. Sir Geo. Symond's Cafe.

Of Mostgages, as to Baron and Feme. Young verf. Radford.

Term mortgaged by Baron and teme, furvives to the Hufband.

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Eliz. Radford being possessed of a Lease for a long Term, married John Holland; then he and his Wife mortgaged their Interest and Term of Years, unto John Emersome, for the Payment of 221. Eliz. dies before the Day of Payment, and John Holland, her Husband paid the Money at the Day, in Redemption of the Mortgage, and entred and made Anne his Wife, Executrix, who entred: John Radford took Administration of the Goods of Eliz. Wife of John Holland, and entred upon the Lessee, upon whom Anne re-entred, and made the Lease to Toung the Plaintiff, in Ejectment. Judgment pro Quer', for though the Leafe was the first Wife's, and the Husband was possessed in her Right, so as though he had purchased the Fee-simple, the Lease had not been extinct, yet by the Intermarriage he had full Power to alien it; and if he furvive

vive the Wife, he is to enjoy it against her Executors, and Administrators. So here And so the when he survives, the Condition survives to Conditionsur him, and reftores him to the Leafe in fuch a State, as it should have been if the Lease had not been aliened; and the rather, for that the Husband paid all the Money after the Death of the Wife. Hob. p. 3. Toung versus Radford.

If a Man be possest of a Term in the Right of his Wife, and mortgageth it for a certain Sum of Money, to be paid at a Day certain, and before the Day the Wife dieth, and the Husband pays the Money at the Day, and then dieth. The Question was, Whether his Executors, or the Administrators of the Wife. shall have the Term. 4 Leon, 185.

Nall and Prifton.

7. S. seised in Fee by Indenture inrolled. bargains, and fells to the Hufband for 120 1. in Confideration he shall redemise it to him and his Wife for their Lives, rendering a Pepper-Corn, and with a Condition that if he paid the 120 l. at the End of 20 Years, the Bargain and Sale shall be void; he doth Redemife it accordingly, and dies, his Wife brings Dower. The Question was, if the Plaintiff shall be relieved against this Title of Dower. By all the Judges, though it he against Equity, and the Agreement of the Husband at the Time of the Purchase, that fhe should have it against the Lessees, for it was intended that they immediately Redemised to him as soon as they parted with it, and it is but in Nature of a Mortgage, and upon a Mortgage, if Land be redeemed,

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the Wife of the Mortgagee shall not have Dower; and if a Husband takes a Fine fur Conisance de droit come ceo, and renders again, although it was once the Husband's, yet his Wife thall not have Dower, for it is in him, and out of him quasi uno flatu, and by one and the same Act; yet in the principal Case she shall have Dower, for by the Bargain and Sale, the Land is vested in the Husband, and thereby the Wife is intitled to have Dower; and when he re-demiseth it upon the former Agreement, yet the Lessees are to receive it Subject to this Title of Dower; and it was his Folly that he did not joyn another with the Bargainee; and when the is Dowable by Act, or Rule in Law, a Court of Equity shall not bar her to claim her Dower; and where no Fraud or Covin is, Equity will not relieve, Cr. Car. 190.

Baron and Feme a Jointure of Lands in Mortgage.

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Under this Head of Baron and Feme, Mortgageors, &c. may be reduced to the Case of Atkins, vers. Nunn, Hill. 25 Car. 2. Nelf. Rep. 97. viz. A Mortgageor marries, and fettles the Land mortgaged, in Jointure to his Wife, and dyed intestate; she got Administration, and brought a Bill to discover Incumbrances on her Jointure; the Defendant claims 2001. by the Will of her Father, but decreed, That he being Tenant in Tail, and having done no Act to bar it, had no Power to devise the 200 L in Prejudice of the Issue in Tail, the Husband of the Feme, to whom this Jointure was made. Also the Administratrix of T. Atkins, was decreed to account for the Personal Estate, and that to be apply'd towards the Discharge of the Mortgage.

and it is but in Nation of Child and a line world.

See also the Case of Soley, vert Whitfield, &c. Hill. 29 Car. 2. Nelfon 277. where an Amuity was settled on the Wife, by Way of A Fine of Lands, out of lointure afterwards the and her Hufband which an Anjoin in a Fine to mortgage Part of the Lands nuity fettled out of which the Annuity issued, and the in Jointure, Mortgagee had Notice of this Annuity. And Annuity. decreed. That by joining in this Fine, the vide post Godhad not extinguish d her Annuity. Note, if dard, verf. Part of a Mortgage be within a Jointure, it Complin. gives the jointress Title to redeem the whole. See Vernon 190.

A Feme Mortgage in Fee of a Copyhold, Peme Mortmarries, and dies, living the Husband, Twas gages Queried, if the Hufband, as Administrator to the Wife, or her Heir, shall have the Mortgage-Money? (But I conceive it to be entirely vested in the Husband.) Vide Vernon's Re-

portigiti70.) michiga as anisage And yet in the Case of Reason, vers. Sacheverel, Paf. 34 Can. 2. in Vernon 41, it feems the Heir of the Wife had the Equity of Re-demption decreed of the Wife's Lands. For Mortgageors, there the Hulband and Wife having join'd er, where the in a Mortgage of the Wife's Lands, the Redemption Husband pays off Part of the Principal, and furvives, &c. after borrows the fame Sum again upon the fame Mortgage; and twas there decreed. That the Heir of the Wife shall not redeem without paying off both Sams. But that Point is now settled otherwise; for which fee 3 Salk. 64. in the Case of Hutton, verf. Manfell, Paf. a Anne, 'twas adjude'd, That where the Husband and Wife mortgages the Wife's Lands, and she dies, the Equity of Redemption survives to the Husband, and Hob. 3. not to the Administrator of the Wife. But Roll. 344

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the Redemption, and not the Executor of the Hulband. But Quere, If this is not to be intended of a Term for Years in the Wife: For the Reason seems, where 'tis the Wife's Inheritance, her Heirs shall have the Right to redeem.

See 1 Chan. Rep. 189. & 3 Salk 65. Lands were charged to pay a Woman's Portion; she married, and the Hulband died before he received it, the Husband's Executors shall have it.

Of Special Covenants, Conditions and Agreements, in Mortgages.

the Wine, of her ideal with the wine heartween Tooms and Chandler.

Christian Fit

Debt on Obligation to perform Conditions, Payments, Provifoes and Agreements in an Indenture. The Defendant pleaded, That the Indenture contained a Leafe by the Defendant to the Plaintiff, to be void by Nonpayment. The Plaintiff Demurs. Hale, Chief Justice, the Word (Condition) would be idle, unless this Bond be effectual: Otherwise, if the Word Condition were not in, and at the Mortgageor's Election to pay or forfeit; but here perhaps the Leffor had no Title, and fo it's but requisite the Mortgagee should have his Money. 1 Keb. 437. But fol. 454. the Case was, Debt on Obligation to perform Covenants, Conditions and Provisoes in an Indenture. The Defendant pleads, That one pay on Mort- Condition was to pay on Mortgage, or to void, it's at be void, and that he was not bound to perthe Mortgage- form it. The Plaintiff demurred. Per Cur. were it a Condition in an Indenture specially recited

Condition to gage, or to be or's Election.

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recited in the Bond, though thereby the Mortgage were forfeited, the Bond is fo too upon non-performance; but being in general to perform all Covenants and Conditions in an Indenture, it binds only to fuch as are compulsory, not to such Conditions as are at the Parties Election to do, or not; this being a Penalty, and only to perform what are on the Part and Behalf of the Defendant to be performed, not to perform all that ought to be performed, as was in Westbrook's and Print's Cafe, Hill. 22 Car. 1. Rot. 116. and therefore it was adjudged for the Defendant. Hales agreed this Difference, but Rainsford and Wild faid, all is one; and in 3 Keb. 460. this Cafe of Tooms and Chandler, was faid to be a Debt on Bond, to perform Covenants in Indenture of Mortgage, to be void, on Nonpayment, and no special Covenant to pay the Money. The Defendant pleaded Performance: The Plaintiff demurred. And per Cur', Judgment for the Defendant, unless the Plaintiff discontinue. 2 Leon. 116.

Brifee and King's Case was, Debt upon Obligation conditioned to perform all Covenants, Payments, Articles and Agreements, comprised in such a Deed dated, &c. The Desendant shews, that the Deed was a Deed of Feossent, wherein was contained, that he, for 100 l. had enseossed the Plaintiss in such Lands In which Deed was a Provisoe, that if the Desendant do not pay by the Plaintiss, to J. S. 40 l to J. D. 40 l. &c. at such a Day, that the Grant, Bargain and Sale should be void, and he might re-enter with Covenants to save harmless, and to make surther Assurance. The Desendant pleads, he had performed all the Covenants, Articles,

Where the Condition of a Bond for Performance of Covenants, extends to the Payment of the Mortgage-Money, or not.

and Agreements on his Part to be performed, The Plaintiff Assigns the Breach, because he did not pay 40 l. at the Day according to the Provisoe, on which the Defendant demurred, and adjudged for the Defendant, per tot Cur'. Forasmuch as there is not any Covenant to pay that Sum, it is a Proviso in Advantage of the Feoffor, that if he paid the Money he should have his Land again; and it is in his Election to pay the Money, or to lose his Land, which is a sufficient Loss to him. The Condition of the Obligation does not bind the Defendant to perform other Payments, than such which the Defendant is bound by the Deed to perform, for the Obligation was made but for the strengthning of the Deed, and the Deed does not require any compulsory Payment to be made, but leaves this to the Will of the Defendant; therefore the Condition of the Bond extends not thereto, but extends to perform the other Covenants, as to fave harmless from Incumbrances, and from Rents, and Arrears of Rents, Cr. Jac. 281. Telv. 206. the same Case.

Special Covenants, Agreements, &c, in Mortgages.

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But further, for special Covenants, Provisoes and Agreements in Mortgages, see the following Cafes, viz. 1 de tarte en de parte

A. mortgages his Lands to B. his Brother, and agrees, &c. That if he has no Iffue Male himself, his said Brother shall have the Lands ; fuch an Agreement may be decreed in Equity. See Vernon's Reports, 193, 194. Howard verf. Harris.

The Mother was Tenant for Life, the Remainder in Fee to her Son; they convey Land to B. in Fee, who is put into Possession, but under this Agreement, viz. If the Money

book gradual

be repaid in Ten Years, B. shall reconvey: The Son, without the Mother, brings a Bill to Redeem, For that the Profits much exceeded the Interest: 'Twas decreed, That B. should account for the Profits, and not to set the Profits against the Interest. Vernon 476,

477. Fultborpe, verf. Forfer.

So in the Case of a Welch Mortgage, where the Mortgagee was put into Possession, and twas agreed, That the Conveyance should be void, on Payment of the Mortgage Money; the therein it was also especially agreed, That the Mortgagee should retain the Profits against the Interest, yet if the Value be excessive, the Court will Decree an Account, even of the Meass Profits, notwithstanding the said special Agreement, to retain the Profits in lieu of Interest. ibid.

So a Mortgage was made in 1673. in which was a special Cause of Redemption, viz. That if the Mortgageor, or the Heirs Males of his Body, should in June 1686, pay off the Principal and Interest, then the Mortgageor, or the Heirs Males of his Body, might re-enter; and the Mortgageor also Covenants, That none but he, or the Heirs of his Body should redeem. Yet the Mortgageor's Wife, (who had a Jointure of Part of the Lands,) was decreed to redeem, Sc. See Vernon's Reports, 190, 191. Howard, yers, Harris.

So a special Proviso was in a Mortgage, That the Mortgageor, or the Heirs Males of his Body might redeem, yet decreed that the Assignee of the Equity might redeem. ibid. 23.

So a Mortgage was made redeemable, during the Life of the Mortgageor only, yet decreed

decreed his Heir might redeem. See Vernon's Reports, 8. Newcom, vers. Bonbam.

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But Note, this Decree was afterwards reversed, on a Bill of Review. Vide ibid. 214.

Yet generally Length of Time is no Objection against a Redemption, especially where the Agreement is, That the Mortgagee shall enter, and hold the Premisses,

until he is satisfied. ibid. 418.

An Annuity was granted out of Land, with a Clause of Entry and Detainer till Payment, and made redeemable on Payment of a Sum certain; the Grantor can't be Fore-closed of the Land, tho' he may of the An-

nuity. ibid. 209.

A Man marries a Jointress of Houses, which are afterwards burnt down, they borrow 1000 l. to rebuild them, and levy a Fine sur concessit; and by a Deed between the Husband and the Conusee of the Fine, the Equity of the Redemption is specially reserved to the Husband and his Heirs: He lays out 2000 l in Building, and dies, yet decreed the Wife, and not the Heir to redeem. Vernon's Reports, 213. Brend, vers. Brend.

If Part of a Mortgage be within a Jointure, it gives the Jointress a Title to redeem

the whole. ibid. 190. 191.

A Wife joins with her Husband in a Mortgage, and levies a Fine to bar her Dower, and in Consideration thereof, the Husband agrees, That she shall have the Equity of Redemption in lieu of her Dower, and afterwards he makes a second Mortgage. This Agreement is fraudulent, as against the second Mortgagee, and shall not entitle the Wife to the Equity of Redemption, against such

Jointures mortgaged.

Fines:

Dower.

fuch Mortgagee. But 'twas decreed, the should have her Dower, notwithstanding the Fine. ibid. 294. Dolin, verf. Coltman.

Note, A Fine levied by a Mortgagee, and five Years Nonclaim, will not bar the Mortgageor of his Equity, &c. ibid. 132. For once

a Mortgage, and always fo. ibid. 8.

A Mortgagee Forecloses, and then specially Foreclosure. agrees with the Creditors, who were Parties to the Suit, to convey to them on Payment of his Money within twelve Months; yet a Redemption was decreed to the Creditors after twenty Years Possession, and great Improvements made by the Mortgagee. ibid. Exton, vers. Greave.

Note, an Infant can't be foreclosed, with Infant; out having a Day to shew Cause when he comes of Age. But the proper Way is to decree a Sale, and that will bind the Infant.

ibid. 295. Booth, vers. Rich.

If a Stranger gets an Assignment of a Stranger Mortgage, for less than is due, yet the Mortgagee, &c. shall not redeem without paying the Whole that is due. ibid. 336.

A. feiz'd in Fee of divers Lands, and having also Lands in Fee mortgaged to him, devises all his Lands to B. and his Heirs, Devises, the mortgaged Lands do not pass. ibid. 3.

A. Mortgagee in Fee, devises the mortgaged Lands to B. for Life, Remainder to C. in Fee; B. shall have one Third, and C. two Thirds of the Mortgage-Money.

ibid. 70.

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Note, in the Case of Goff and Skipton, Parol Agree-Litt. Rep. 211. (which see hereaster, Cb. 11.) ment after a after a Mortgage executed, a special, verbal executed, al-Agreement was, That if the Money was not low'd. Q. paid at the Day, the Mortgagee should cut the

AND THE PARTY OF

Emblements on the Land, avers their taking, and prays an Account thereof. And the Averment was allowed good, notwithstanding the written Deed. 2.

CHAP. VII.

A Defeasance on Land forfeited, by Way of Cove. nant. A Defeasance upon a Judgment in Ejestment, for better Assurance of Lands mortgaged. A Defeasance, where an Estate is made absolute in Fee, without any Proviso of Redemption in the Deed. That upon Payment of so much Money, as was the Consideration-Money in the first Deed, with Interest, within such a Time, that then the Grantee in Fee, to reconvey in Fee. A Deed, in Nature of a Defeasance, of a former absolute Conveyance, &c. A Mortgage, by Way of Demise and Redemise. A. mortgageth for Tears to B. who redemiseth to A. for a lesser Term upon Nonpayment, to be void. Covenant for further Assurance. A. levies a Fine to B. if it extinguisheth the Redemise; How it shall be preserved. Mortgage for Tears, with Confirmation by Fine. Tenant in Tail mortgageth, and then suffers a Recovery to make a Joynture, whether the Subsequent Recovery hall make good the precedent Mortgage.

A Defeasance on Land forfeited, &c.

Recital. THIS Indenture made, &c. between A.

B. of, &c. of the one Part, and C. D.

of, &c. of the other Part, Witnesseth, That
whereas the said C. D. by his Indenture bearing Date, &c. for the Considerations therein
mentioned,

mentioned did give, grant, bargain, fell and confirm, unto the faid A. B. his Heirs and Affigns, all those Lands, &c. with the Appurtenances, fituate and being in, &c. In which faid Indenture there is a Proviso, or Condition to this Effect. That if the faid C. D. his Provisor Heirs, Executors or Assigns, or any of them, do well and truly pay, or cause to be paid. unto the faid A. B. his Executors, Administrators or Assigns, the full Sum of, &c, that then, and from thenceforth, the faid recited Indenture, and every Covenant, Clause, Matter, and Thing therein contained, shall be utterly void, and of none Effect, as by the faid Indenture it doth more at large appear which said Sum, &c. was not paid at the Forfeiture. Day and Time above limited for the Payment thereof, according to the Effect of the said Proviso; by Reason whereof, the said Lands, &c. in the faid Indenture mentioned. are absolutely vested and settled in Law, in the faid A. B. yet nevertheless the faid A. B. is contented and pleased, and doth Covenant and Grant, to, and with the faid C. D. his Executors, Administrators and Affigns, that Defeafance by if he, the faid C. D. his Executors, Administrators and Assigns, or any of them, do well and truly pay, or cause to be paid unto the faid A. B. his Executors, Administrators or Affigns, the full Sum of, &c. that then, and from thenceforth, the faid recited Indenture shall be utterly void, and of none Effect, the Breach made by Nonpayment of the faid Sum of, &c., in the aforementioned Proviso contained, or any Thing therein to the contrary notwithstanding. And also on full Covenant to Payment of the faid Sum of, &c. at any Time within five Years next enfuing, he, the faid -hubA A. B.

Way of Cove-

A. B. his Heirs and Affigns, shall and will; at the reasonable Request, Costs and Charges in the Law of the said C. D. his Heirs and Affigns, convey, and affure unto the faid C. D. and his Heirs for ever, the faid Lands, &c. with the Appurtenances in the faid recited Indenture, mentioned in fuch Manner and Form as shall be by the said C. D. his Heirs or Affigns, or his, or their Council learned in the Law, reasonably devised, advifed, or required. And also that he, the faid A. B. his Heirs or Affigns, shall deliver, or cause to be delivered unto the said C. D. his Heirs or Affigns, within two Months next after such Payment made, all Deeds, Evidences and Writings which the faid A. B. hath touching or concerning the Premisses, fafe, whole, uncancelled and undefaced. In Witness, &c. stones not bold and the Software Ant Anton Trees & Blance

And deliver up Writings.

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A Defeasance upon a Judgment in Ejestment, for better assuring of Lands mortgaged.

HIS Indenture made the Day of Esc. between A. B. of, Esc. of the one Part, and C.D. of &c. of the other Part. Whereas this present Term of St. Hillary, there is a Judgment obtained against the said C. D. at the Suit of O. O. Lessee of the said A. B. in a Plea of Trespass and Ejectment, for the Manor of, &c. with all its Rights, Members and Appurtenances, and certain other Lands and Tenements, fituate, lying, and being in, &c. which faid Manor and Premisses were heretofore mortgaged by the faid C. D. to Sir A. B. Knight, deceased. Now it is hereby concluded and agreed, and the faid A. B. for himself, his Heirs, Executors and 1.5 2 Admi-

Administrators doth covenant, grant, and agree, to, and with the faid C. D. his Heirs, Executors and Administrators by these Prefents, that the faid O. O. shall not take out any Execution upon the faid Judgment against the said C. D. for the Recovery of the Possession of the said Premisses, before the last Day of the Term of next enfuing. And further, it is hereby agreed and declared, that if the Money due upon the faid Mortgage, shall, in the mean Time be justly paid and fatisfied unto the faid A. B. his Executors, Administrators or Assigns, that then the faid A. B. shall and will, at the Request, Costs and Charges of the faid C. D. his Heirs. Executors and Administrators, give Order, and authorize the faid O. O. to acknowledge Satisfaction upon the faid Judgment, or do any other Act or Thing for the discharging of the same, as shall be reasonably devised. and advised, by the Council learned in the Law of the said C. D. his Heirs, Executors and Administrators. In Witness, &c.

Defeasance, where an Estate is made absolute in Fee, without any Proviso of Redemption in the Deed, that upon Payment of so much Money, as was the Consideration Money in the first Deed, within such a Time, then the Grantee in Fee, to reconvey in Fee.

THIS Indenture made, &c. between A. B. Recital.

of, &c. of the one Part, and C. D.

of, &c. of the other Part: Whereas the faid

C. D. by Indenture of Lease and Release,
the Lease bearing Date, &c. made between
him of the one Part, and the said A. B. of
the other Part, for the Consideration therein

mentioned,

mentioned, did grant, bargain, sell, release, and confirm unto the said A. B. and his Heirs, all that Messuage, &c. To have and to hold the same to the said A. B. his Heirs and Assigns, to the Use of him, his

Heirs and Assigns, as in and by the said Indentures of Leafe and Releafe, Relation being thereunto had, may more at large appear. Now this Indenture Witnesseth, and the true Intent and Meaning of the faid Indenture, and of the Parties to the same, and of these Presents, and the said Parties likewise to the same, was, and is hereby so declared to be, and the faid A. B. for himself, his Heirs and Assigns, doth covenant, promise and grant to, and with the faid C. D. his Heirs, Executors and Administrators by these Presents. That if he the said C. D. his Heirs, Executors or Administrators, or any of them, shall well and truly pay, or cause to be paid unto the faid A. B. his Heirs or Affigns, the full and just Sum of, &c. of Lawful Money of England, at or upon the Day of, &c. without any Abatement, or Defalcation out of the same for Taxes, Charges, Assessments, or other Cause or Thing whatsoever, that then and from thenceforth, the faid A.B. his Heirs and Assigns, and all Person and Persons claiming the faid Premisses in, by, or under the faid recited Indentures of Leafe and Release, or any Part thereof, shall and will, at the Request, Costs and Charges of the faid C. D. or his Heirs, transferr, assign and set

over the faid recited Premisses, and every Part and Parcel of the same so expressed to be granted as aforesaid, together with the said Indentures unto the said C.D. and his Heirs, or to such other Person or Persons, as

Covenant to Reconvey.

he the faid C. D. shall nominate and appoint, discharged of all Incumbrances by him done or fuffered: And that in the mean Time, from and after full Payment and Discharge of the faid Sum of, &c. as aforefaid, and until fuch Affigument be made, that the faid A. B. and his Heirs, and all Persons standing and being seised of the Premisses, by, from, or under him or them, should be seised thereof, and of every Part and Parcel thereof, in Trust to and for the fole Use, Benefit and Behoof of the faid C. D. his Heirs and Assigns, and to and for no other Use, Intent or Purpose whatfoever; and the faid C. D. for himfelf, his Heirs, Executors and Administrators, doth covenant, promise, grant, and agree to and Covenant to with the faid A. B. his Heirs and Affigns by pay the Mothese Presents, That he the said C. D. his Heirs, Executors or Administrators, some or one of them, shall and will, well and truly pay, or cause to be paid unto the said A. B. his Heirs and Affigns, the faid Sum of, &c. and every Part thereof, at the Day and Place above mentioned for the Payment thereof, without making any Deductions or Abatements out of the faid Sum, or any Part thereof, for Taxes, Charges, Affeffments, or for other Cause, Matter or Thing whatsoever, according to the true Intent and Meaning of these Presents. And it is hereby declared, concluded and agreed, by, and between the said Parties, That it shall and may be lawful to, and for the faid C. D. and his Heirs, from Time to Time, and at all Times hereafter, until Default of Payment of the said Sum of, &c. or any Part thereof, at the Day and Place before limited and appointed for Payment of the same, to make any Lease, Power to F 2 Demise, make Lease

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Demife, or Grant of all or any the faid Meffuages, Lands, Hereditaments and Premisses in the faid in Part recited Indentures, contained for any Term or Number of Years whatfoever, fo as fuch Demife, Leafe, or Grant so to be made, be made bona fide, and there be referved upon the fame the best and most improved yearly Rent that such Mesfuages and Tenements fo to be leafed, can truly and bona fide be lett for; and fo as fuch yearly Rents to to be referved, be payable or made payable, and be paid unto the Person and Persons that shall be seised of the Reversion of the said Premisses so leased, immediately expectant upon the fame Leafes to be made. And lastly, It is declared, concluded and agreed by, and between all the faid Parties to these Presents. That it shall and may be lawful to and for the faid C. D. and his Heirs, to have, hold, occupy and enjoy the faid Meffuages, Lands, Hereditaments and Premisses, and every Part and Parcel thereof, in and by the faid recited Indentures mentioned to be granted, and to receive and take the Rents, Issues and Profits of the same. until Default of Payment of the faid Sum of. &c. or any Part thereof, at the Day and Place above mentioned for Payment of the fame, without the Let or Diffurbance of the faid A. B. his Heirs or Affigns, and without any Account to him, them, or any of them, to be had or given for the same. In Witness, &c.

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A Deed in the Nature of a Defeasance, of a former absolute Conveyance; and a Declaration. Part of the Premisses were the Inberitance of one of the Mortgageors, and other Part of another, and both joined as one Security for a Sum of Money, and Covenant to make respective Reconveyances upon Payment; the two principal Mortgageors Covenant to fave the former Mortgagee and the other Grantors. barmless from the Covenants in the precedent Grant.

HIS Indenture Quinque partite, made, &c. between A. B. of, &c. Esq. of the first Part, C. D. of, &c. of the second Part, E. F. and G. H. of, &c. of the third Part, J. K. of, &c. of the fourth Part, and L. M. of. &c. of the fifth Part. Whereas by Indenture of Release, bearing Date. &c. they the said G. D. E. F. and G. H. in Confideration of 600 1. Recital. of lawful, &c. unto them paid and lent by J. E. of, &c. did give, grant, release, and confirm unto the said J. E. in his actual Possession, then being by Virtue of a Bargain and Sale for the Term of Years therein men- Mostgage. tioned, and of the Statute for transferring of Uses into Possession, and his Heirs and Affigns for ever, All, &c. in the faid Indenture of Release, more particularly specified and described. To hold unto the said J. E. his Heirs and Assigns for ever, under a Pro- Proviso. viso for Redemption, upon Payment of the faid Sum of 600 l. with Interest thereof, unto the faid F. E. his Executors, Administrators or Assigns, within the Compass, or at the End of three Years, in fuch Manner as the same is thereby limited to be paid, as in and by the faid

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Recital of a Title of one of the Grantors who was a Mortgagee. faid Indenture of Lease and Release, Relation being thereunto had, may appear. And whereas by Indentures of Leafe and Releafe, the Leafe bearing Date the fecond, and the Release bearing Date the third Day of, &c. reciting, as in and by the same or one of them is recited, and that the faid Sum of 600 l. was not then paid, so that the Estate aforefaid conveyed unto the faid J. E. and his Heirs, was become absolute, he the said 7. E. for and in Confideration of the Sum of 600 l. to him paid by the Direction of the said C. D. and also they the said C. D. E. F. and G. H. in Confideration of like Money to them paid, did give, grant, bargain, and fell, remife, releafe, guit Claim, and confirm unto the faid L. M. and his Heirs for ever, all and every the aforesaid Messuages, Closes, &c. and other Herereditaments and Premisses in and by the faid first mentioned Indentures of Leafe and Releafe formerly conveyed unto the faid 7. E. as aforefaid, with all and every of their Rights, Members, Privileges and Appurtenances, to hold unto the faid L. M. his Heirs and Affigns for ever, under a Provifo or Condition in the faid last mention'd Indenture of Release contained for Redemption of the faid Premisses on Payment of 7501. of, &c. unto the faid L. M. his, &c. at several Days therein and thereby limited, which are all long fince past and expired. And whereas the aforesaid 750 l. was not paid according to the Limitation of the faid last mentioned Proviso or Conveyance, whereby the faid Conveyance unto the faid L. M. is become absolute. And whereas by Indentures of Lease and Release, the Lease bearing Date the Second, and the Release the Third

Third Day of, &c. the Release being of three Parts, made between the faid C. D. and M. his Wife, E. F. G. H. and I. K. of the First Part, and the faid L. M. of the Second Part, and the faid A. B. of the Third Part, and by Fine thereby covenanted to be levied, they the faid C. D. and M. his Wife, E.c. for and in Consideration of the Sum of 1000 l. of like lawful, &c. unto them in Hand paid by the faid A. B. did give, grant, bargain, fell, alien, enfeoff, release and confirm unto the said A. B. and his Heirs, the faid Messuages, &c. above mentioned: And also all that, &c. To hold unto the faid A. B. his Heirs and Affigns for ever, as in and by the faid last mention'd Indentures and Fine, Relation, &c. And whereas the faid feveral Meisuages, &c. and Premisses are intended by all the Parties to these Presents, to be a Security only Intended to to the faid A. B. for the Sum of 1000 l. and the Interest thereof after the Rate of 5 l. per Cent. per Annum, payable, and to be paid as herein after is mentioned. And whereas all the Premisses by the said Indentures Tripartite of Release and Lease next immediately preceding the same mention'd (except the Estates of two Meadow called, the &c. at and before the Personsjoin'd Time of executing the faid Indenture Tripartite) was the proper Estate and Inheritance of him the faid I. K. and by particular Agreement between them the faid I.K. and C. D. added to the faid other Premisses to make a more full and ample Security for the said Sum of 1000 l. and Interest, &c. out of which said Sum of 1000 l. was paid the Sum of &c. in full Satisfaction of all Moneys by Vertue of the faid Indenture of the Third Day of, &c. due and payable unto F4

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for Security.

Provifo by way of Covenant.

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him the said E. L. who together with the faid E. F. and G. H. at the Request and by the Direction and Appointment of the faid C.D. and I.K executed and joined in the Execution of the Conveyance of all the faid Premisses unto the said A. B. and his Heirs. Now this Indenture witneffeth, and the faid A. B. for himself, his, &c. and for every of them doth declare, covenant, and agree, to and with the faid C. D. and I. K. and either of them, their and either of their, &c. by these Presents. That if the said C. D. and I. K. and either of them, their and either of their, &c. or any of them shall well and truly pay or cause to be paid unto the said A. B. his. Ec. the full Sum of 1100 l. of Ec. at or in the, &c. in Manner and Form following, that is to say, &c. and that without any Deduction, Defalcation, or Abatement what soever, for or in Respect of any Taxes, Rates, Asses, ment, Charges, or Impolitions whatfoever, that then and from thenceforth, and at all Times afterwards the faid Indenture Tripartite, and the Estate thereby, and the said intended Fine granted and perfected shall cease, determine, and be utterly void. The faid Indenture Tripartite, or any Thing therein contained to the contrary thereof in any wife notwithstanding. But if Default shall be made in any one of the faid Payments contrary to the Form aforesaid, then the fame to remain in full Force and Virtue; and the faid C. D. and I. K. for themselves and either of their, &c. covenant to pay the said Sum of 1100 l. &c. and the said A. B. for himself, his, &c. doth covenant, &c. to and with the faid C, D. and I. K. they and either of them, their and either of their, &c. and

and every of them by these Presents in Manner and Form following, (that is to fay) That until Failure or Default shall happen After Default to be made of Payment of the faid several covenant to Sums of Money, or one of them, contrary to enjoy refpethe Covenant or Agreement above written, they the faid C. D. and I.K. their Heirs and Affigns shall and may peaceably and quietly have, hold, and enjoy the faid Messuages, &c. and Premisses in the said Tripartite Indenture mentioned and recited, and take the Rents, Islues, and Profits thereof, according to their respective former Estates and Interests therein, to their own and respective Use and Uses, without any lawful Lett. &c. And also that he the said A. B. his, &c. upon Receipt of the faid Sum of 1100 L at the Days and Times above limited, shall and will furrender, release, or deliver up the said In- Upon Paydentures of Leafe and Release unto them ment to dethe faid C. D. and I. K. or one of them, their Writings, or one of their Heirs or Affigns, and at the reasonable Request, Costs and Charges of them the faid C. D. and I. K. their Heirs or Affigns, shall and will make fuch Reconvey- And reconance or Release of the Premisses aforesaid, vey. with the Appurtenances, unto them the faid C. D, and I. K. their respective Heirs and Affigns (viz.) of all the faid Premisses, except the faid, &c. aforefaid, unto the faid C. D. his Heirs and Assigns, and of the said Meadow unto him the said I. K. his Heirs or Assigns. or to fuch other Person or Persons as he. they, or any of them shall direct or appoint, as they the faid C. D. and I. K. or either of them, their or either of their Counsel, &c. And from and after Payment of the faid Sum of 1100 l. and until fuch Reconveyance or Release

Until Reconveyance to the Use of the Fine, and the Conuzees

Release executed, that he the said A. B. his Heirs and Assigns, or other Conuzee or Conuzees in the Fine by the faid Indenture Tripartite covenanted to be levied, his or to fland feifed their Heirs shall and will from and after such Payment as aforefaid fland, and be feifed of the faid Premisses, and the said Fine shall from thenceforth enure to the Use following (that is to fay) as to all the faid Premiffes, except the said &c. to the Use and Behoof of the faid C. D. his Heirs and Assigns for ever. And as to the faid, &c. to the Use and Behoof of the faid I. K. his Heirs and Affigns for ever, and to, and for no other, &c. And laftly, the faid C. D. and I. K. for themselves, &c. do covenant, &c. to and with the faid E. F. G. H. and L. M. and every of them, their and every of their, &c. by these Presents, that they the said C. D. and I. K. their, and either of their, &c. shall and will from Time to Time and at all Times hereafter fave, defend, keep harmless and indemnify'd, them the faid E.F. G. H. and L. M. and every of them, their, and every of their Persons Goods, Chattels, Lands and Tenements, of and from the Grants, Covenants and Agreements in the faid Indenture Tripartite, contained, and of and from all Actions. Suits, Cofts, Charges and Damages whatfoever, touching or concerning the same Actions Suits, Cofts and Damages for his, her or their wilful Breach, or concerning of any the faid Grants or Agreements, or any of them only excepted. In Witness, &c.

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Theprincipal Mortgageors covenant to fecure the former Mortgagee, Or.

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Mortgage by Demise and Redemise.

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A. mortgaged for Years to B. who redemised to A. upon Non-payment to be void, for a lesser Term, with Covenant in the Mortgage, that A. should make further Assurance, and afterwards A. levied a Fine to B. which per Cur' extinguisheth the Redemise of B. But if it had been expressed in the Writing or Agreement, that the Redemise of B. should not be extinguished, it would not be extinguished, and if there were any Agreement that it should be in Consirmation, the Construction of Law will preserve it. 3 Keb. 432, 452. Heale and Kerkbam, cited by Hales in How and Stile's Case.

Quere, How the Estate on the Redemise may be preserved? By Bargain and Sale in

Fee and Redemise. Cr. Jac.

President of Mortgage by Demise and Redemise,

THIS Indenture made the, &c. Between A. B. of &c. and C. D. of the other Part witnesseth, That the said A. B. for, and in Consideration of the Sum of sool of lawful, &c. to him in Hand paid, &c. the Receipt whereof, &c. hath demised, granted, bargained, and fold; and by these Presents doth demise, grant, bargain, and sell unto the said C. D. his Executors, Administrators and Assigns, all that, &c. and all Lands, Meadows, Pastures, Privileges, Advantages, Liberties, Hereditaments and Appurtenances, whatsoever to the said Manor and Premisses belonging, or in any wise appertain-

appertaning, or now, or at any Time heretofore accepted, reputed, taken or known as Part. Parcel, or Member thereof, or of any Part thereof, or otherwise held, used, occupied or enjoyed, as Part, Parcel or Member thereof, or any Part thereof: And also all the Rents and yearly Profits, Reservation and Service referved, due or payable by or upon any Demise, Grant or Lease of the Premisses, together with the Counter-parts of all fuch Demises, Leases or Grants. To have and to hold the faid, &c. unto the faid C. D. his Executors, Administrators and As. figns from the making hereof, for, and during the full Term of 1000 Years, fully to be compleat and ended, without Impeachment of, or for any Manner of Waste, yielding one Pepper-corn, &c.

A. B. covenants with C. D. that he is lawful owner, and seised in Fee; and then the Lessee shall peaceably enjoy, except Leases

in being.

The Redemise.

This Indenture made, &c. between C. D. of, &c. and A. B. of, &c. of the other Part witnesseth, That the said C. D. for and in Consideration of the Condition, Covenants, Proviso, and Agreements herein after mentioned, contained, and expressed, and for divers other good Causes and Considerations him moving, hath demised, granted, and to Farm letten, and by these Presents doth demise, grant, and to Farm let unto the said A. B. his Executors, Administrators and Assigns, all, &c. all and singular, which said Premisses were by Indenture bearing Date

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Date the, &c. Day of this Instant March; for the Consideration of 60 l. demised, granted, bargained, and sold by the said A. B. unto the said C. D. his, &c. from the making of the said Indenture for the sull Term of 1000 Years, as by the said Indenture more plainly may appear. To have and to hold, all and singular the said, &c. from the Day of the Date of this present Indenture, for and during the sull End and Term of 999 Years from thenceforth next ensuing, and sully to be compleat and ended.

And the said A. B. for himsels, his Heirs, Executors and Administrators, doth covenant and grant, to, and with the said C. D. his Executors, &c. by these Presents, That he the said A. B. his Heirs, Executors, Administrators or Assigns, some or one of them, shall and will well and truly pay, or cause to be paid unto the said C. D. his Executors, Administrators and Assigns, at or in the now Dwelling-House of, &c. the full Sum of 560 l. of &c. in Manner and Form sollowing, &c.

without Abatement for Taxes, &c.

Provided always, That if the said A. B. heis Heirs, Executors, and Assigns, shall make any Default in Payment of the said Sum of 560 l. or any Part thereof, at the Day and Place herein before covenanted for Payment thereof; that then and from thenceforth this present Indenture, and the Demise and Grant hereby made and granted, shall cease, determine, and be utterly void, and of no Effect, and that then and from thenceforth it shall and may be lawful, to, and for the said C. D. his Executors, Administrators and Assigns, into the said, &c. and Premisses, and every Part thereof to re-enter, and the same

to have again, repossess and enjoy, as in his former Estate, any thing herein contained in any wife norwithstanding. And further, it is hereby covenanted, granted, concluded and agreed, by and between the faid Parties to these Presents, and the said C. D. for himself, his, & doth covenant, promise and agree, to, and with the faid A. B. his, &c. that if he, the faid A. B. his, &c. or any of them shall, and do well and truly pay, or cause to be paid unto the said C. D, his, &c. the faid Sum of 560 l. at the respective Days and Place, and in fuch Sort, Manner and Form as the same is herein covenanted to be paid; that then and from thenceforth, and immediately after the faid last Payment made the faid Indenture of Demise of the faid Premisses made to the said C. D. of the Premisses for 1000 Years, bearing Date this Instant March, and all the Estate and Term thereby granted shall cease, determine, and become void, any Thing before contain'd to the contrary thereof in any wife notwithstanding; and that then, and in such Case upon the Delivery up unto the said C. D. his, &c. of that Part of the faid Demise of 1000 Years, and of these Presents which is under the Hand and Seal of the faid C. D. he the said C. D. his Executors, Administrators and Affigns, shall and will upon Request deliver up unto the faid A. B. his Heirs or Assigns, that Part of the said Demise of 1000 Years, and of these Presents, which is under the Hand and Seal of him the faid A. B. covenants to make further Assurance if Default shall be made of the 560 l.

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C. D. covenants, that A. B. his Executors, Administrators and Assigns, paying and performing all the Payments, Covenants, Grants and Agreements, herein contained on their Part to be paid and perform'd, shall quietly and peaceably hold, occupy and enjoy all and singular the said, &c. and the Premisses with the Appurtenances hereby demised, or mention'd to be demised without the Let, Trouble or Interruption of the said C. D. his Executors, Administrators or Assigns, and free and clear from all Incumbrances whatsoever, had made or done by him the said C. D. In Witnesses, &c.

Mortgage for Years with Confirmation by Fine, with several Uses of the Fine.

HIS Indenture made, &c. between A. B. I of &c. of the one Part, and C. D. of, Uc. and E. F. &c. of the other Part witneffeth: That for and in Confideration of the Sum of, &c. of lawful Money of England to him the faid A. B. in Hand paid by the faid C. D. and E. F. or one of them, before the Sealing and Delivery of these Presents, the Receipt and Payment whereof the faid A. B. doth by these Presents acknowledge, and thereof, and of every Part and Parcel thereof, &c. he the faid A. B. hath granted, demised, bargained and fold, and by these Presents doth grant demise, bargain and fell unto the faid C. D. and E. F. their Executors. Administrators and Assigns; all that, &c. together with all and fingular the Messuages, Cottages, Edifices, Buildings, Barns, Stables, Outhouse, Orchards, Gardens.

dens, Meadows, Leafows, Pastures, Feeings. Woods, Under-woods, Waters, Water Courfes, &c. to the faid Messuages, Hereditaments and Premisses, belonging or appertaining, or to, or with the same used, Esc. and the Reversion and Reversions, &c. To have and to hold the faid Messuages, &c. unto the faid C.D. and E.F. their Executors. Administrators and Assigns, from henceforth, for and during the Term, and unto the full End and Term of 500 Years next enfiring, and fully to be compleat and ended, without Impeachment of, or for any Manner of Waste, yielding and paying, &c. And it is covenanted, concluded and agreed by and between the faid Parties to these Prefents, and the faid A. B. for himself, his Heirs, Executors and Administrators, doth covenant, promise and agree, to and with the said C. D. and E. F. their Heirs and Asfigns by these Presents, that he the said A. B. shall and will on this Side, and before the End of Hillary Term next ensuing the Date hereof, in due Form of Law, levy and acknowledge before his Majesty's Justices of the Court of Common Pleas at Westminster, or before some other Person or Persons in that Behalf lawfully authorifed, one or more Fine or Fines, sur Connsance de droit come ceo. Esc. with Proclamations thereunto to be had and made according to the usual Course of Fines with Proclamations for Assurance of Lands in fuch Cases used, and the Form of the Statute in that Behalf made and provided, unto the faid C. D. and E. F. and their Heirs, or the Heirs of one of them, of all the said, &c. and all and singular other the Premisses herein before demised, granted, bargain0

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hargained and fold, or meant, mentioned, or intended to be hereby demised, granted, bargained and fold, and of every Part and Parcel thereof, with their and every of their Appurtenances in the faid Fine or Fines, to be by the Name or Names of, &c. or by fuch other convenient Name or Names, Additions, Descriptions, Quantities, Qualities, Contents and Numbers of Acres, or otherwise in such Manner and Form as by them the faid C. D. and E. F. or either of them, their, or either of their Heirs or Ailigns, or any of them, their, or any of their Council learned in the Law shall be thought fit and convenient. And it is declared and agreed, by and between all the faid Parties to these Presents, and in particular the faid A. B. doth for himfelf, his Heirs and Affigns, declare and agree, that the faid Fine fo as aforefaid, or in any other Manner to be had and executed, and all and every other Fine and Fines, Conveyances and Affurances had and executed, or to be had and executed, by, or between the faid Parties to these Presents, or any of them of the faid Lands and Premifses, and every Part and Parcel thereof, be and enure, and the faid C. D. and E. F. Cognizees in the faid Fine, and their Heirs shall fland and be seised of the said Premisfes, and every Part thereof, with their Appurtenances, to the Use and Behoof of them, the faid C. D. and E. F. their Executors, Adminiftrators and Affigns, for, and during all the faid Term of 500 Years, for the better, more perfect, and absolute Confirmation, Corroboration, Strengthning and Security of the faid Term and Estate hereby granted, and every Part thereof, during the faid Term of

of 500 Years herein before mentioned and expressed, and from and after the Expiration or other Determination of the faid Term of soo Years herein before mentioned, to the only Use and Behoof of the said A. B. his Heirs and Affigns for ever, and to and for no other Uses. Intents and Purposes whatsoever. Provided always, and upon this Condition nevertheless, That if he the said A. B. his Heirs, Executors or Administrators, or any of them, do, and shall well and truly pay, or cause to be paid unto the said C. D. and E. F. their Executors, &c. the full Sum of, &c. which shall be in the at, or upon the Year of our Lord God without making or demanding any Deduction or Abatement. for or by Reason of any Taxes, Charges, or Payments iffuing out of, or charged or impofed on the Premisses, or any Part or Parcel thereof, or upon the faid Sum of, &c. by any Act or Acts of Parliament made, or to be made, or otherwise howsoever; that then and from thenceforth this present Indenture, and the Estate and Term hereby granted, and the faid Use of the said Fine or Fines, so covenanted to be levied as aforefaid, being limited to them the faid C. D. and E. F. their Executors, Administrators and Assigns, for and during the faid Term of 500 Years, for the Confirmation and better Security of the faid Estate, and Term in the Premisses hereby granted or mentioned, or intended to be granted, shall cease, determine, and be utterly void; any Thing herein contained to the contrary in any wife notwithstanding.

T. Man. off

Goddard versus Complin.

Tenant in Tail demiseth his Lands for 99 Years, by Way of Mortgage, and after marries, and in Consideration thereof, and of 500 L. Portion, fuffers a Recovery to enable him to settle a Jointure, and afterwards takes up more Money of the Mortgagee, upon the former Security.

Two Questions were in this Cafe.

1. Whether the Defendant shall be allowed Money lent, after the Recovery and Marriage?

The Court declared, If the Defendant had no Notice of the Jointure when he lent the new Money, he must be allowed it.

2. Whether this Recovery shall enure to make good the Mortgage, it being defigned for the Marriage Settlement only?

And it was declared, That the subsequent Recovery shall enure to make good precedent Acts, and the is in by the Act of her Hulband. Chan. Cafes 119. Goddard and Complin.

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Recital of an Original Lease from the MerchantTaylors Company of a Manor; Assignment thereof for a Trust Settlement, in Consideration of the Wise's baving relinquished ber Jointure. The Man and Wise mortgage it to N. V. for 700 l. who had a Fine sur concessit. Assignee dies, and leaves Executors, the Mortgage Money not being paid. The Mortgageor and his Trustees, and the Executors, join in a Mortgage to T. C. and T.S. for a surther Sum of 900 l. and after for a surther Sum, and to pay off the other Security. They all mortgage to Sir E. R. With several good Clauses for Removal of Mortgages.

HIS Indenture made, &c. between 7. F.

the Widow and Relict of F. F. late of, Sc. deceased, W. F. the only Son and Heir of the faid F. F. by the faid 7. and T. B. of, &c. of the First Part; Sir G.R. of, &c. of the Second Part; and T. S. Efg. and C. H. of, Esc. of the Third Part. Whereas the Master and Wardens of the Merchant Taylors of the Fraternity of St. John Baptist, in the City of London, by their Indenture of Lease under their Common Seal, Dated, &c. 1664, and in the 16th Year, &c. for the Considerations therein mentioned, did demise, lease, betake, and to Farm let unto the faid F. F. all that their Manor or Lordship of, &c. in the &c. To have and to hold the faid Manor. and other the Premisses, in and by the said recited Indenture mentioned to be demifed, with the Appurtenances unto the faid F. F. his Executors and Affigns, from the Feast of, &c. unto the full End and Term, and for and

during

Original Leafe recited.

during the Term of Sixty One Years from thence next coming, and fully to be compleat and ended, yielding and paying therefore yearly, during the faid Term, unto the faid Mafter and Wardens, their Successors and Affigns, or certain Attorney, within their Common Hall, commonly called the Merchant Taylor's Hall in London, the yearly Rent of, &c. at two usual Feasts, &c. and under a certain Covenant, Clause or Agreement, in the faid recited Indenture of Leafe contained, for the Payment every Year yearly, during the faid Term, unto F. M. of London, Gent. Common Clerk of the faid Society during his Life; and after his Death, to fuch Person and Persons as the said Master and Wardens, and their Successors, shall nominate, and affign to keep Courts there, as therein is expressed, for and in the Name of the Steward's Fee, the Sum of 20 1. of like lawful Money, as in and by the faid recited Indenture of Leale, &c. And whereas in and by one other Indenture, being an Indenture of Affignment, dated the 20th Day of the fame Month of December, in the faid Year of our Lord 1664, made, or mentioned to be made, between the said F. F. and F. his then Wife of the one Part, and the faid T. B. and E.F. of London, Esq; (since deceased) of the other Part, the said F. F. did assign and set over the Assignment faid Manor to the faid F. B. and E. F. their in Nature of Executors, Administrators and Assigns, for ment. the then Residue of the said Term of 61 Years upon feveral Trufts, and in particular in Truft of and for the Benefit of the faid 7. F. in Cafe the should happen to survive and overlive the faid F. F. and likewise in Trust for the said W. F. or fuch Person as shall happen to be Heir

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Heir Male of the Body of the faid W. F. at the Time of the Decease of the Survivor of them the faid F. F. and F. in Case the said W. F. or any Heir Male of his Body, should be living at the Time of the Decease of the Survivor of them the faid F. F. and J. But in Case the said 7. should survive and outlive the faid F. and W. and that the faid W. shall happen to have no Issue Male of his Body living at the Time of the Decease of the said 7. then the faid Premisses and Trust thereof. to be and remain for the fole Use and Benefit of the faid 7. and of her Executors, Administrators and Assigns, as by the said last recited Indenture of Assignment; and amongst several other the Trusts, Articles, Clauses and Agreements therein contained, it may appear which faid last recited Indenture was in Truth made in Confideration that the faid 7. at the Request, and for the particular Conveniency, and to comply with the Occasions of the said F. F had quitted and relinquished her Jointure which was fettled upon her by the faid F. F. before the Marriage between the faid F. and 7. and in Confideration of such Marriage, and of the Marriage Portion of the faid 7. received by the faid F. and had joined with the faid F. in a Conveyance of her faid Jointure, which was of a much greater yearly Value than the faid Manor and Premisses herein before mentioned; and the faid Premiffes fo affigned, were by Agreement to be in Lieu and Place of, and a Satisfaction for fuch a Jointure, albeit there be no Mention of any the faid Confiderations, Matters or Things therein particularly expressed. whereas, after the making and executing of the last before recited Indenture of Assignment.

ment, the faid F. F. having occasion to borrow, and take up at Interest, of one N.V. of London. Gent. the Sum of 700 l. did prevail with the faid 7. to consent and agree to give Directions to the faid T.B. and E. F. that they should assign over their Estate in Law in the faid Premisses, and their Term therein, for the securing the Repayment of the faid 700 l. with the Interest thereof he the faid F. F. undertaking to repay the faid Monies, and upon the Repayment thereof, to procure the faid Premisses, and the Term thereof to be reconveyed unto the faid T. B. and E. F. their Executors, Administrators and Affigns, subject to the same Trusts on the Behalf, and for Benefit of the faid 7, as the fame were then subject in the Hands of the faid T. B. and E. F. Whereupon in and by one other Indenture of Affignment, dated the 20th Day of the same Month of December. Anno Dom. 1664. and by Fine fur concessit thereupon had and levied in the Term of St. Hillary then next following, for and in Confideration of 700 l. therein mentioned to be Baron & Feme. paid to the faid F. F. by the faid N.V. and and their other the Considerations therein expressed. the faid F. F. and 7. his then Wife, and the faid W. F. T. B. and E. F. did Grant and Affign unto the faid N. V. his Executors, Administrators and Assigns, the said Manor, &c. and all other the feveral and respective Premisses, in the said several and respective hefore recited Indentures mentioned; and all the Estate, Right, Title, Interest, Term of Years, Claim and Demand of them the faid F. F. J. his then Wife, W.F. T.B. and E.F. and every of them, of, in and to the faid Manor and Premisses, and every Part thereof, G 4 together

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together with the faid Original recited Indenture of Demile, and all mean Atlignments touching the same; To hold unto the said N. V. his Executors, Administrators and Asfigns, for, and during all the Rest and Residue of the faid Term of 61 Years, then to come and unexpired, under a Proviso or Condition nevertheless, for the making void thereof. upon Payment by the faid F. F. and W. F. their Heirs, Executors, Administrators, or Assigns, unto the said N. V. his Executors, Administrators or Assigns, of the full Sum of 742 L at the Place, and on the feveral Days and Times therein mentioned, and not long fince past, as by the said last recited Indenture and Fine, Relation being thereunto had, it also may more at large appear. And whereas the faid Sum of 742 l. mentioned in the faid recited Proviso or Condition, in the faid last recited Indenture of Assignment contained, was not paid on the Days and Times, therein limited for the Payment thereof, by Reason whereof the said Condition became broken, and the faid Estate and Term of the faid N.V. of and in the faid Premisses, became absolute, after which the said N. V. having made his Last Will and Testament, and thereof made E. V. N. L. and I. L. all of London, Merchants, his Executors, departed this Life; after whose Death, the said F. F. having occasion for a further Sum of Money. prevailed with the faid J. to confent and agree, and to give Directions to the faid T. B. and E.F. to join with the faid Executors of the faid N.V. in Affigning and Transferring the faid Premisses, and the then Residue of the faid Term therein, for the then raising and fecuring of fuch Moneys as the faid F. had then

Affignee makes his Executors,

then occasion to take up, as well for the Payment of what was then due upon the Security of the faid Premisses, unto the Estate of the faid N. V. as for his own particular Occafions, he the faid F. F. promising and undertaking to repay all fuch Moneys as should be so taken up, and to procure the faid Premisses to be reconveyed to the faid T. B. and E. F. their Executors and Affighs, subject to the fame Trufts, on the Behalf, and for the Benefit of the said 7. as the same were formerly sub- The Mortject in the Hands of the faid T. B. and E. F. gageor and Whereupon in, and by one other Indenture and the Exeof Affignment, being an Indenture Tripar- cutors, join in tite, dated the, &c. and made between them a Mortgage the faid F. F. and J. his Wife, W. F. T. B. and for a further E. F. of the first Part, the said E. V. N. L. and I. L. of the second Part, and I. C. and T.S. of London, Gent. of the third Part, in Confideration of 700 l. paid to E.V. W. L. and I. L. and of the further Sum of 400 l. paid to the faid F.F. by the faid I.C. and T. S. the faid F. F. and J. his then Wife, W. F. T. B. and E. F. and by their Appointment the faid E. V. N. L. I. L. did bargain, fell, assign and set over unto the said F. C. and I. S. their Executors, Administrators and Affigns, the faid Manor, &c. and all and fingular other the Premisses in the said several and respective herein before recited Indentures and Fine mentioned, with their and every of their Appurtenances, and all the Estate, Right, Title, Interest, Term of Years then to come, Truft, Claim and Demand what soever of them the faid F. F. J. his then Wife, W. F. T. B. E.F. E.V. N. L. and I. L. and every of them, of, in and to the same. To hold unto the said I.C. and

T. S. their, &c. for all the Rest and Residue of the faid Term of 61 Years, as were then to come and unexpired, under an Agreement on the Part of the faid I.C. and T.S. for reconveying and re-affigning the Premisses unto the faid T. B. and E. F. their Executors and Assigns, upon Payment by the said F. F. and W.F. or either of them, their, or either of their Heirs, Executors, Administrators or Assigns, unto the said I.C. and T.S. their Executors, Administrators or Assigns, the Sum of 1648 l. at the Place, and on the Day and Time therein mentioned, as by the faid Indenture Tripartite it also may appear. And whereas the faid Sum of 1648 1. mentioned in the faid Agreement, contained in the faid last recited Indenture, was not paid, whereby the Estate of the said I.C. and T.S. of. and in the faid Premisses, became absolute and discharged of the said Agreement. And whereas afterwards the faid F. F. having Occasion for a further Sum of Moneys towards the paying what was due to the faid I. C. and T.S. upon the Security of the faid Premisses. he the faid F. F. did farther prevail with the faid 7. to confent and agree, and likewise to give Directions to the faid T. B. and E. F. to join with the faid I. C. and T. S. in the transferring and affigning of the faid Premisses, and of the then Residue of the said Term therein, for the raising of such Moneys as the faid F. F. then defired to raise upon the Security of the same Premisses, he, the said F. F. undertaking to repay all fuch Moneys as should be so taken up, and to procure the faid Premisses to be Reconveyed to the said T. B. and E. F. subject to the same Trusts for the Benefit of the said 7.

as the same were formerly subject as aforefaid. Whereupon in and by one other In. The Mortdenture of Allignment, being an Indenture gageor, Mort-Tripartite, dated the, &c. and made between gagee, and Trustees, take the said F. F. the said J. his then Wife, W. F. up a surther T. B. and E. F. of the first Part; the said I. C. Sum. and T. S. of the second Part; and the said Sir G. R. by the Name of G. R. of London, Merchant, of the third Part, in Consideration of the Sum of 1500 l. Sterling unto the faid I. C. and T. S. by the faid Sir G. R. and of 100 l. Sterling by the faid F. F. paid unto the faid I. C. and T. S. and of 5 s. apiece to the faid F. F. and the faid 7. and the faid W. F. T. B. and E. F. by the faid Sir G. R. likewise paid, the said F. F. and the said 7. the faid W. F. and also by their Direction and Appointment, the faid T. B. E. F. I.C. and T.S. did bargain, fell, affign and fet over unto the faid Sir G. R. their Executors, &c. the said Manor, &c. and all the Estate, &c. of them the faid F.F. J. his then Wife, W. F. T. B. E. F. I. C. and T. S. and every of them, of, in, and to the same. To hold unto the faid Sir G. R. his Executors, Adminifirators and Affigns from thenceforth, for, and during all the Rest and Residue of the said Term and Time of 61 Years then to come and unexpired, under an Agreement on the Part of the faid Sir G. R. for reconveying and re-affigning the Premisses to the said T. B. and E. F. their Executors, &c. upon Payment made by the faid F. F. and W. F or either of them, their or either of their Heirs. Executors, Administrators or Assigns, unto the faid Sir G. R. his Executors, Administrators or Assigns of the Sum of 1590 1. of Lawful, &c. at the Place, and at the feveral Days and Times

Times therein limited for the Payment thereof, and now long fince past, and in Manner and Form as the same is therein limited to be paid as by the faid herein last recited Indenture of Assignment, Relation being thereunto had, it also much more at large appeared. And whereas the faid Sum of 15901 in the faid last Indenture mentioned was not paid unto the said Sir G. R. &c. whereby the Eftate of the faid Sir G. R. of and in the faid Premisses is become absolute and discharged of the faid Agreement in the faid last recited Indenture mentioned. And the faid F. F. and likewise the said E. F. are both of them fince dead, and the faid 7. F. is defirous and hath agreed to pay in the faid Monies due unto the faid Sir G. R. upon the Security of the faid Premisses, to the Intent to have the faid Premisses and the faid Estate and Term therein conveyed and fettled, subject to the feveral Trusts herein after limited, according to the true Intent and Meaning of thefe Presents. And the said J. F. hath been neceffitated for the paying and discharging of the faid Moneys due upon the faid Security. to borrow and take up at Interest of and from A. B. of, &c. the full and just Sum of 200 l. Sterling, for the fecuring the Repayment of which with Interest at a Time now to come she the said 3. hath enter'd into a Bond of the penal Sum of 400 l. Sterling, bearing even Date with these Presents. Now these Presents witness, that for and in Consideration of the feveral and respective Sums of 5 s. apiece by the faid T. S. and C. A. feverally and respectively in Hand paid unto the faid Sir G. R. F. W. F. and T. B. the feveral and respective Receipts and Payment whereof

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whereof they the faid Sir G. R. J. F. W. F. and T. B. do by these Presents severally and respectively acknowledge, and thereof and of every Part thereof do, and each and every of them doth release and discharge the said T. S. and C. A. their Executors, Administrators and Affigns, and each and every of them by these Presents, and likewise for and in Confideration of the further, full, and just Sum of, &c. Sterling, by the said 7. F. in Hand likewise paid unto the said Sir G. R. in full Payment and Satisfaction of and for all fuch Moneys as are any ways due unto him upon the Security of the faid Premisses. or by Force and virtue of the faid herein last before recited Indenture of Assignment, or any thing therein contained, the Receipt and Payment of which faid last mentioned Sum of, &c. he the faid Sir G. R. doth hereby accordingly acknowledge, and thereof, Sc. they the faid F. F. and W. F. and also by their and each of their Direction and Appointment the faid T.B. and Sir G.R. have, and each and every of them hath bargained. fold, affigned, transferred and fet over, and by these Presents they and each and every of them do and doth fully, clearly and absolutely bargain, fell, affign, transfer and fet over unto the faid T.S. and C. A. their Executors, &c. the faid Manor, &c. and all and every other the faid feveral and respective Premisses before mentioned to be demised, granted and affigned in and by the faid feveral and respective before recited Indentures and Fine, or any of them, and every Part and Parcel of the fame, with their and every of their Appurtenances, and the Reversion and Reversions, Remainder and Remainders, Rents.

Rents, and yearly or other Profits of all and fingular the faid Premisses, and every Part and Parcel of the same. And all the Estate, Right, Title, Interest, Property, Term of Years yet to come, and unexpired, Trust, Claim and Demand whatfoever as well in Law as in Equity of them the faid 7. F. W. F. T. B. and Sir G. R. and of each and every of them in, unto, and out of the faid Premisses, and unto and out of every Part and Parcel of the same by Force and Vertue of the faid feveral before recited Indentures and Fine, or either or any of them, or other. wife howfoever, together with the faid feveral before recited Indentures, and the Chyrography of the faid Fine, and all mean Affigurents. Deeds and Writings touching and concerning the same now in the respective Hands of them the faid 7. F. W. F. T. B. and Sir G. R. respectively, or which they can respectively come by without Suit in Law or in Equity. To have and to hold unto the faid T. S. and C. A. their Executors, Administrators and Affigns from henceforth, for and during all the Rest and Residue of the said Term and Time of 61 Years in and by the said herein first recited Indenture of Lease granted yet to come and unexpired; under and subject nevertheless to the feveral and respective Trusts, Provisoes and Limitations thereof herein after limited, specified and declared, and to and for no other Intents or Purposes whatsoever; That is to say, &c.

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CHAP. VIII.

Of buying in precedent Incumbrances. Mortgagee buying in a precedent Incumbrance, shall bold against a middle Mortgagee till both are satisfy'd. Where a Mortgagee buying in a precedent Security of the Lands in his Mortgage. and other Lands, shall bold all against a middle Mortgagee, of all those Lands till all due to bim on both Securities be Satisfied. Mortgagee buys a precedent Incumbrance, and pleads be ought not to discover the Estate till all be paid off, and good. Aliter adjudged in the Exchequer. Statute not to be used as to Lands not in the Mortgage.

Qu. As to the Purchase of an Incumbrance against Notice of the Second Mortgage. Diversity between Charges on the Land and Interest in the Land, as to Discovery. Conusee when to account, according to the extended Value at Law, and for Profits over and above the Value in

Equity.

Sir Ralph Bovey cont' Skipwith.

Nno 1657, Sir Francis Drake made the A Puifne Plaintiff a Security out of the Manor Mortgagee and Rectory of W. Anno 1656, Sir Fr. Drake made the Defendant a Security for Money out cumbrance of the Rectory only (the Defendant having shall hold ano Notice then of the Plaintiff's Security, which was for Money also) afterwards the gee, till both Defendant hearing of the Plaintiff's Security, are fatisfy'd. buys in a Security precedent to the Plaintiff's, which one Beddingfield had, both upon the Manor and Rectory.

buying in a precedent Ingainst a middle Mortganitted to redeem Bedding field's Security without paying off what was due to Skipwith?

And it was ruled he should not.

A Mortgagee
buying in a
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2. Qu. Inasmuch as the Desendant's Security was only out of the Rectory, and the Security he bought in from Beddingsield was of both the Manor and Rectory, the Desendant should make Use of Beddingsield's Security as to the Manor, after that by the Prosits of the Manor and Rectory, Beddingsield's Debt was satisfied, and whether the Plaintiss should not then be admitted to enjoy the Manor, his Security being as well of the Manor as the Rectory, and the Desendant to hold only the Rectory till he was satisfied?

Wyld and Twysden were of Opinion, That after Skipwith had received what was due on Bedding field's Security, he should receive no more Profits of the Manor, but the Plaintist to be let in to receive them, and the Defendant only to make Use of Bedding field's Security as to the Rectory, to protect his Security of the Rectory; but it was resolved and ruled, That the Defendant should hold both the Manor and Rectory against the Plaintist, till all due to him on both the Securities was paid him.

Siddall granted a Rent-Charge of 300 l. per Annum to H. the Plaintiff for 2000 l. and afterwards mortgageth the Premisses for 1200 l. to Calamy. Calamy being dead, those that have his Interest buy in a precedent Judgment to the Grant of the Rent-Charge; the Plaintiff exhibits his Bill to discover what Estates the Defendant claims, and chargeth that Calamy had Notice of the Plaintiff's Rent before

before the Mortgage. The Defendant pleads the Mortgage to Calamy, and that afterwards hearing of precedent Incumbrances, they bought in a legal Title precedent to the Plaintiff's; and offer, if the Plaintiff will pay all due on the Mortgage, and on their new acquired Title, to affign all to him; but if he will not, they ought not to discover what Mortgagee Estate that is they have bought, nor ought buys in a pretheir Title to be drawn under Examination brance, and in Equity; and by way of Answer deny'd, pleads he that to their Knowledge or Belief, Mr. Calamy ought not had any Notice of the Rent Charge when to discover he lent his Money, and the Plea was allowed the Estate till all be paid off. good. Ch. Cases 149. Higgen and Siddall.

The like to this was Mach and Lee's Case. 22 Car. 2. and the like Plea pleaded and allowed to be good, and the Estate protected

by a Statute.

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A Mortgagee may protect himself by get. Statute not to ting in an old Incumbrance, the nothing be be used as to due upon it. But a Statute bought in by a Morigage. Mortgagee ought not to be used to Lands not in his Mortgage, the Statute being but an Incumbrance and no Estate.

In Primate and Jackson's Case, Grove and Grove's Case, and Mr. Calamy's Case, it was refolved in Chancery, That a Purchafer or Mortgagee coming in upon a valuable Confideration without Notice, and purchasing in a precedent Incumbrance, it shall protect his Estate against any Person that hath a Mortgage subsequent to the first, though before the last Mortgage; and though he purchased the Incumbrance after he had Notice of the fecond Mortgage.

In Hacket and Wakefield's Case, in Scaccario, Hard. 172. the Plaintiff was a Purchaser

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for a valuable Confideration of 60 l. per Annum for Lives, and the Defendant afterwards took the Lands fo charged in Mortgage, and being informed that the Plaintiff was before him in Time, he took Affignments of three Recognizances prior to the Plaintiff's Title, two of which were for Money, and the third for Counter-Security, upon which he extended all the Lands charged; and now the Plaintiff feeks by his Bill a Discovery of the Nature of those dormant Incumbrances. and for what Cause contracted, and what was actually received and paid upon them, or by Perception of Profits fince the Extent. To which the Defendant pleaded his Mortgage, and subsequent to that his Purchase of the other Incumbrances to corroborate his Security, and that therefore he ought not to make any Discovery. But the Court overruled his Plea, and order'd him to answer, and that the Matter of the Plea should be faved to him at the Hearing. Though it was otherwise ruled in Chancery; and Baron Turner faid, if the prior Incumbrance that was taken in had been a Fee-simple upon a forfeited Mortgage, that then the fecond Mortgagee or Purchaser should not have a Discovery, because then the whole Estate was absolutely in the first, and consequently the second would have no Interest in it; but here the first Incumbrances were only Charges upon the Land, the Conusees having no Interest in it. This was in the Exchequer, 12 Car. 2.

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Diversity between Charges on the Land, and Interest in the Land, as to Discovery.

Trin. 22 Car. 2.

Duppa's Executors cont' Lee.

The Case in Chancery was, E. being seised of Buying in of the Manor of W. and of the Manor of M. precedent Inin -47 mortgageth Part of the Manor to cumbrances. Burrell for 1000 l. Afterwards in - 55 he acknowledgeth a Statute to Burrell of 800 l. for Payment of 400 l Afterwards in -62, E mortgageth both these Manors to Mr. Duppa for 7000 l. Afterwards in --- 65, E. mortgageth the Manor of W. to Lee for 2000 l. Lee having no Notice of the faid former Mortgages, but after Lee coming to have Notice of the said Mortgage to Mr. Duppa, doth purchase in the two prior Incumbrances made to Burrell, (viz.) the Mortgage of Part of the Manor of W. and the Statute: The Executor of Duppa fues Lee in Chancery, and Lee pleads the whole Matter. And per Cur' Lee may make Use of these Incumbrances to protect his own Mortgage, and he shall hold the Estate against Duppa, until he be satisfied for both the Money which he paid Burrell, and also his own Money lent upon the Mortgage. And Duppa's Executor shall not bring Lee to any Account upon this Statute in Equity, any otherwise than he may do at Common Law. Now, at Common Law the Co- Contifee when mon Law. Now, at Common Law the occount acbut then the Conusee shall not account ac the extended cording to the true Value, but according to Value at Law, the extended Value. But if the Conusor and for Prowill sue in a Court of Equity, then he shall above the bring him to account for what he hath re- value in

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ceived of the Profits above the extended Value: But in this Case Duppa shall not bring him to account for what he hath receiv'd above the extended Value, unless he hath receiv'd enough to fatisfie both his Securities. And the Court held the first Mortgage (being but Part) shall not extend to protect more than the Part of the Manor first mortgaged to Burrell. 2 Ventr. 337.

But further to illustrate this Head of Mortgagees, &c. buying in precedent Incumbrances, we may to the former add the following

Cases, viz.

Darcey verf. Hall, Pafeb. 1682. Vernon 49.

where aMortgagee buys in an Incumbrance, he shall be alis due, aliter of an Heir or Truftee. Vide Brathwait's Cafe. Vernon 335.

Where an Heir or Trustee buys in an Incumbrance, he shall be allowed no more than what he really paid for it, unless he bought it in to protect an Incumbrance to which himlowed all that felf is intitled; but where a Stranger that has an Incumbrance upon an Estate, buys in another Security to protect his own, he shall not only hold it till he is satisfied his own Debt, and reimbursed himself the Money paid for the Incumbrance so bought in, but even till he has received all the Money and Arrears of Interest due on the Security so bought in.

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But in this Case, tho' it was an Heir that bought in the Incumbrance, yet (there being fome special Circumstances in the Case) he was allowed on Account the whole Money due on the Incumbrance he bought in, tho' he paid less for it. See the Case of Philips vers. Vaughan, Mich. 1685. Vernon 336.

Long vers. Clopton, Trin. 1687. Vernon 464.

On a Master's Special Report to whom But against a the Account in this Case was referr'd, The Court determin'd, That an Heir or any other shall not against a real Purchaser be allowed more than he more on any Incumbrance bought in, than what he actually paid for the same, without any Regard to what was really due thereon. And that where a prior Incumbrancer buys in a subsequent Incumbrance with Notice of Notice. an Intervening Security, he shall not be allowed the same.

And the Case of Borough and Francis was Burgh versus cited, which now fee in Nelson's Reports. Francis. Vide Where a Bill being brought by the Exe- Nelfon 28. cutors of the Mortgagee to Supply a defective Mortgage, and to be relieved against Judgments fuffered by the Heir of the Mortgageor, 'twas decreed accordingly; and that it shall not be in the Power of the Heir to charge or incumber the Lands, by fuffering Judgments against himself in Prejudice of such Mortgagees Equity. terior of kines Health Carried

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Williams versus Springfield, Michael 1687. Vernon 476.

The Plaintiff had mortgaged the Lands Mortgagee in Question to J. S. who finding it to be a affignes for slender Security and not worth the Money less than real-due thereon (the Plaintiff's Wife in Case she Mortgageor furvived her Husband, having a Right of shall not re-Dower in the faid Lands) J.S. agreed with deem withthe Defendant Springfield to affign the Mort- out paying gage to him for 1001. altho' there was 1501. the Whole. then

H 2

Purchaser no Person shall be allowed paid for fuch Incumbrance

Vide Vernon

then due to him thereon. The Plaintiff now brings his Bill to redeem, and the fole Question was, Whether the Defendant should be allowed all the Money that was then really due on

the Mortgage?

Where there Incumbrances or Creditors, the Buyer of prior Incumbrancesis allow'd only what he really paid; aliter, if between him and the Mortgagee or Heir.

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Per Cur' Where there are subsequent Inarefubsequent cumbrances or Creditors in the Case, there a Man that buys in a prior Incumbrance shall be allowed only what he really paid, though there be in Truth a greater Sum due; but where the Mortgageor himself, or his Heir, comes to redeem, there is no Reason that he should have the Benefit of a good Bargain made by another Man; and therefore he ought to pay whatever is really due on the Mortgage without Regard to what the Affignee paid, and decreed accordingly.

> Edmunds versus Povey, & al'. Mich. 1682. Vernon 187.

See the Cafe at large ante.

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The principal Point in this Case, was this: A third Mortgagee without Notice at the Time of his Mortgage, buys in the first Incumbrance, being a fatisfy'd Judgment; he shall have the Benefit of this Judgment, tho' when he took it in he had Notice of the fecond Mortgage. See the Cases Darcey versus Hall, and Philips versus Vaughan supra.

Brathwait versus Brathwait. Mich. 1685. Vernon 335.

Note, on the 4th Point in this Case, 'twas decreed, That an Heir buying in an Incumbrance on an Estate charged with younger Childrens Portions, shall be allowed no more than what he really paid,

But

But as to Purchasers of mortgaged Lands Purchasers buying in of prior Incumbrances, it may be buying in Infurther observed, — That where such Purchaser buys in a Statute that is extended he shall account only according to the extended Value, and not according to the real Value. Vide Vernon 51,52.

The Assignee of a Statute purchases the Estate having Notice of a second Statute, Quere how far he shall make Use of the first Statute to protect his Purchase. Vide ibid. 49.

50, Gc.

Stroud and Dickinson in Chancery, 28 Gar. 2.

Note, The Defendant having an Obligation Prior Judgfrom 7 S. to secure his Debt, purchased in ments. one Judgment precedent to his own Debt, and another subsequent, yet in Time before the Judgment had by the Plaintiff from the same 3. S. thereby hoping to have his own Debt that was melne satisfy'd, but the Plaintiff having extended, and being evict by Tryal on the first Judgment, pray'd the Defendant might account and take Payment thereof, Account, vide that fo he might be let in; which Finch, Cap. 11. Chancellor, decreed, albeit the fecond Judgment was precedent to the Plaintiff's; it being never extended, but purchased for small Value to fave the Debt by Obligation, which was faid to be contrary to the accustomed Practice of the Court. 3 Keb. 754. and as it feems to be fraudulently done.

CHAP. IX.

Server Server Server Server Server

Of Assignment of Mortgages. Leases for 500 Tears, voluntary at first, made good upon Money paid afterwards upon the Assignment of it, before the Purchase of the Inheritance. Mortgagee for Tears out of actual Possession assigns it, yet good. Where an old Mortgage ought to be taken as a new Mortgage. Where Money is paid by the Assignee to the Mortgagee, shall be principal as to the Assignee. Where the Money shall be intended to be paid at the Day. Account before Assignment and after. Assignee at the third Hand to account. Presidents of a Mortgage by way of Covenant. The Money to be paid within fix Months Notice at any Time within two Tears. Lands mortgaged for 500 Years, and affign'd to Trustees in Trust for the Mortgagee, and further Sums borrowed and fecured by transferring the Assignment Indenture of Assignment and a Proviso; Then a Release of the Proviso, and Equity. And then another Affigument, with another Proviso and Release of Equity; and at last the whole bargained and assigned on a new Proviso. Covenant on Payment of Money such a Day then to assure Lands, but not to be taken as a Mortgage, but an absolute Sale if the Money be paid at the Day. Assignment of a Mortgage for Tears which was forfeited, whereto the Mortgageor is made a Party, and confirms the Assignment and Estate, with a further Proviso of Redemption by the Assignor. Conveyance by way of Mortgage to be void on the Mortgageor's discharging such Debts as the Mortgagee is Surety for bim. Mortgage Security for Money lent or to be lent.

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lent. A Grant of Lands by Letters Patents for 60 Years assigned in Trust to pay Debts, the Trustees in Consideration of Marriage, and 6000 l. Portion which the Heir secures by Assignment: a Joynture to be made within three Tears. A Grant of Lands for 500 Years, for securing an Annuity during the Mortgagee's Life, or an entire Sum. Two Grants of Fee-Farm Rents and Tithes, and the same mortgag'd. Assignment and Mortgage of Building, Leases and Plots of Ground in London.

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ONE of the first Cases of Assignment of Mortgages as I find is in 3 Leon. 78. Stamp's Case, and argued there to be a Kind of Maintenance. The Case was, I.S. being posses'd of a Term for Years granted the fame to T. S. his Brother, 12 May 20 Eliz, and afterwards 8 Oct. 21 Eliz. he himself being in Possession of it mortgaged the same to one P. who suffered him to continue his Possession. T. S. granted his Estate to I.S. who mortgaged the same to one G. who suffered the faid I.S. to continue in Possession until 10 Dec. 22 Eliz. G. entered. I. S. came to the faid P. and requested him, that he would grant all his Estate to B. and C. to whom the faid I. S. was indebted for Security of their Money; to whom the faid P. faid, That if he would find him any other Security for his Debt he would be content fo to do, and I.S. offered to the faid P. the faid B. and C. and he accepted the same; and at the Request of the faid I. S. granted his Interest to them. 2 Febr. 22 Eliz. P. having Notice of the Grant before made to the faid E. upon which E. informed against P. upon Stat. 32 H. 8. Per Cur. P. is not within the Penalty of the Statute; Statute; for P. granted his Interest to B. and C. at the Report of the said I.S. who was the Mortgageor, for Assurance of his Debt which he owed to them, and therefore it shall not be intended that that Grant was made for any Maintenance: And also I.S. was in Possession a whole Year before the Grant.

Smartle and Williams.

Affignments.

Ejectment of Lands in Cornwall, at a Tryal at Bar, it appeared on Evidence, That J. K. seised in Fee, mortgaged it to Penmorrice in 1659, for 500 Years, which Deed was acknowledged and enrolled in 1667, in it was the ordinary Covenant, that the Mortgageor shall retain Possession until Default of Payment, the Mortgagee being out of Possession affigns the Term to Bluck, the Executors of Bluck affign the Term to T. K. who was the Ceffuy que Truft ; T. K. brought an Ejectment to recover Possession, and hanging this, asfigns the Term to Sir Cb. Muddiford. Sir Cb. Muddiford makes a Mortgage of it for 100 Years to H. Coventry, without taking Notice of the first Mortgage by way of Recital, but demised this to him by way of original Mortgage, as if he had been Owner of the Land, and after this, the first Mortgage Money is paid to Sir Charles by the Mortgageor, and he assigns the original Mortgage to him, and he for valuable Confideration, conveys the Inheritance to the Defendant Williams, and delivers to him the original Deed of Mortgage, so the Plaintiff who claims as Executor to Coventry had it not to produce but he produceth a Copy of the Inrolment of it to make

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make his Title. Divers Things were objested for the Defendant: 1. That the Copy is not Evidence. Sed Cur' contra: 2. The Leafe for 500 Confideration of the first Mortgage is not Years volunproved, and the Consideration paid by Williams upon the Purchase is void, and so the upon Money first Mortgage voluntary, and void against paid afterhim; but the Consideration paid by Sir Cb. Muddiford, being proved upon the Affignment made to him, the Court held this sufficient Purchase of to maintain the first Deed of Mortgage, for the Inherithis was a Deed, and the Confideration paid by Muddiford upon the Affignment to him before the Purchase of the Defendant, made this a Deed upon valuable Confideration, although it was not fo at first. Quer. faith the Que Reporter, for the contrary hath been held: But in Proger's and Higham's Case, P. 15 Car. 2. B. R. It was held as here. 2. It was objected. That all the Affignments beside the first being made off the Land, and this by the Mortgagee without the joyning of the Mortgageor, were void; the Parties being out of Possession at the Time of the Assignments, it was urged, that the first Assignment by the Mortgageor only was good. The Mortgageor by the Covenant to retain Possesfion unto Default of Payment, this makes the Mortgageor Tenant at Will to the Mortgagee; but when the Mortgagee had made the first Assignment, by this the Tenancy at Will determined, and the Mortgageor by Retainer of the Possession afterwards was a Dif- Mortgagee feifor and so all the Affignments by the Mort- for Years out gagees being out of Possession without the of actual Concurrence of the Mortgageor are void, and figns it, yet the rather in this Case, because Muddiford had good. brought an Ejectment before his Affignment,

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and by this had admitted himself out of Possession before, and at the Time he made the Assignment or Lease to Coventry. But Cur. held all the Affiguments good; for although the Tenancy at Will was determined. the Mortgageor was yet Tenant at Sufferance, and not of Necessity a Disseisee, and the bringing of the Ejectment is not but an Admittance that he was in actual Poffession, but not of an actual Diffeifin, and fo the Jury found pro Quer. Lessee of the Executors of Coventry, Assignee of the Lessee of Muddiford. 3 Leon. 387. Smartle and Williams's Cafe.

An old Mortgage affigned to another ought Where an old to be taken as a new Mortgage from the Time of the Affignment, because an Account was stated with the Assignor, and he paid off.

Cafes 218.

Earl of Macclesfield versus Titton. Pas. 1683. Vernon 168.

A Mortgagee affignes, and the Affignee pays off both Principaland a great Arrear of Intereft. Quere, if this Interest shall be reckon'd as Principal against the Mortgageor.

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The Case was, a Mortgagee assignes his Mortgage to Fitton the Defendant, who pays off both the Principal and the Interest (i.e. all that was due on the faid Mortgage) which was much in Arrear (the original Mortgage Money being but 1500 l. and the Money paid on the Affignment 2300 l.) And the Question was, if the 800 l. paid for the Interest in Arrear should be reckon'd Principal as to the Defendant, the Affignee, and carry Interest with it.

And for the Plaintiff, twas infifted, that Interest was never made Principal in such a Case, unless the Mortgageor had joined in the Asfignment; and they cited the Case of Porter and Hubbart, where in a like Case, it was de-

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creed. That Interest should be reckon'd as Principal; but for that Reason, the Decree was revers'd in the House of Lords.

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But the Lord Keeper faid, That Precedent would not weigh much with him: For he was of Counsel in the Case, and it was hard in all its Circumstances. For there the Mortgage being in the late Times, altho' the Mortgageor received all the Profits without Interruption, when Things were dearer than ordinary, by Reason of the Troubles, &c. yet the Lords would not allow of 61. per Cent. Interest, but reduced it to 4 l. per Cent. But although he thought it reasonable, That the Interest paid upon the Assignment should be reckon'd Principal, yet he was unwilling to make a new Precedent, and directed the Defendant's Counsel to search for Precedents. and if they could find any one, he would follow it in this Cafe.

Note, after this, in Michaelmas Term fol- vide I Change lowing, in the Case of Howard and Harris, Rep. 67. the Lord Keeper was clear of Opinion, That Vernon 194. as to fo much Interest as was reserved in the Body of the original Deed, it should be reckon'd Principal; for it being ascertained by the Deed, an Action of Debt would lie for it; and therefore it was reasonable, That there should be Damages given for the Nonpayment of that Money. And whereas 'twas urged, That it had never been so practifed; and that there was not any fuch Precedent; and that if this were established for a Rule. every Scrivener would referve all his Interest Half-yearly from Time to Time as long as the Money continu'd upon the Security, which would be to change the Law and Practice in this Court, and make all Mortgages carry Interest

Interest upon Interest. —— But the Lord Keeper said he was clear in that Distinction between Debt and Damages; and he saw no Inconvenience that could ensue; it would serve only to quicken Men to pay their just Debts, and therefore decreed accordingly.

And Note, where ever Lands are charged with a Sum certain, or in Gross, they are in Equity chargeable with Interest for that Sum

See Nelson's Chan. Rep. 286.

Money paid by the Affignee to Mortgagee shall be principal to the Affignee.

All Money really due, and paid by the Affignee to the Mortgagee, shall be principal to the Assignee: But the Account between the Mortgagee and Affignee, not to conclude, the Mortgageor. Cb. Cases 68. And ibid. fol. 258. The Lord Keeper declared it as a Rule on a Mortgage forfeited, That the Mortgagee should have Interest for his Interest, and be only accountable for what Profits he should receive, and not for what he might have received, unless there be a Fraud. And that it was always the Rule, That on the Mortgagee's affigning, the Affignee should have Interest for the Interest then due. And that this Rule was never contradicted, but in Porter and Herbert's Case in Lord Shaft/bury's Time. Yet see 2 Salk. 449. That a Mortgage made with a Proviso, that future Interest if not paid, shall be taken as Principal, and bear Intereft, fuch proviso is void!

A Mortgagee covenants, That the Mortgageor shall quietly enjoy 'till Default of Payment, and then Assignes; after such Assignment, the Mortgageor is only Tenant at Sufferance; but his continuing in Possession does not turn the Term to a Right, nor make

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a Disseisin. Salk. 245, 246.

In Evidence to a Jury at Bar it was agreed in Ejectment. Per Curiam, That against a Mortgages Mortgagee Subsequent, as the Plaintiff was, there can be no Averment that the Money was not paid at the Day according to a former Mortgage, but that the Estate was forfeited contrary to his own Deed of Affignment; or were it but an Indorsement of the Receipt of the Money; for elfe the Affignee of the first Mortgagee intermediate would be cheated, which the Assignee of the first Mortgagee cannot be: But it appearing that the Defendant had taken an Assignment under the first Mortgageor after the Day, as if the Money were paid; the Court directed. that it must be intended the Money was paid at the Day, and so the Mortgage subsequent beintended to to one made to the Defendant is good: And be paid at the Verdict pro Quer. 2 Keb. 486.

In Venable's Case, The Mortgagee was order'd Account beto account before the Assignment, and after it. ment and For Accounts upon Mortgages, Vide post C. 11

A Mortgagee after Forfeiture assigns, and Bill to reis decreed to account for the whole Time, deem, Aswithout the Assignee's being made a Party. count.

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a e A Bill was brought, 20 Car. 2. to redeem a Mortgage made in 1632. It was infifted by the Defendant, that he came in as Affignee at the third Hand, and it would be hard to put him to Account now. And by the Lord Keeper (because no Time was stinted for the Redemption of a Mortgage) the Defendant shall account; but in Regard he comes in at an old Hand, shall not account but so far only as goes in Discount of his Money, but not for the Surplusage. Chan. Cases 102. Pearson and Pulle's Case.

A. Mortgagee for Years out of actual Possession, assigns, yet held good. See Smartle and Williams's Case, ante Cap. 8. pag. 106.

Mortgage

Where the Money shall be intended to be paid at the Day.
Account before Affignment and after:
Bill to redeem, Affignee to 26

Mortgage by way of Covenant, the Money to be paid within six Months after Notice at any Time within two Years.

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T'HIS Indenture made the, &c. between A. B. of, &c. C. D. of &c. E. F. of, &c. G. H. of, &c. of the one Part, and J. P. of. Sc. of the other Part witnesseth: That the faid A. B. C. D. E. F. G. H. for and in Confideration of the Sum of 15001. of lawful Money of England, to the faid A. B. in Hand paid by the faid 7. P. at or before the Sealing and Delivery of this present Indenture, the Receipt whereof the faid A. B. doth by thele Prefents acknowledge, and thereof, and of every Part and Parcel thereof, doth clearly and absolutely acquit and discharge the faid 7. P. his Executors and Administrators for ever by these Presents. And also for, and in Consideration of the Sum of 5 s. of like lawful Money to the said C. D. E. F. G. H. in Hand paid by the faid J. P. at or before the Sealing and Delivery of this present Indenture, the Receipt whereof they do hereby acknowledge, have demised, granted, bargained, and fold, and by these Presents do demife, grant, bargain and fell unto the faid J. P. his Executors, Administrators and Assigns all that capital Messuage or Manor-House of B. in C. &c. and the Reversion and Reversions, Remainder and Remainders of all and fingular the Premisses with their Appurtenances, and of every Part and Parcel thereof, and all Rents and Profits thereunto incident and belonging. To have and to hold the faid capital Meffuage or Manor-House, Cc. and all and fingular other the Premisses whatfoever,

Demife, Bargain and Sale for 200 Years.

whatfoever hereby demifed or mentioned to be demised, with their and every of their Appurtenances, unto the faid J. P. his Executors, Administrators and Assigns, from the Day next before the Day of the Date hereof. for and during, and unto the full End and Term of 2000 Years from thence next enfuing, and fully to be compleat and ended, yielding and paying one Pepper-Corn, &c. And the faid A. B. for himself, his Heirs, Executors, Administrators and Assigns, doth covenant, promise, and grant, to and with the said J. P. his Executors, Administrators and Affigns, by these Presents, that he the faid A. B. his Heirs, Executors, Administrators or Assigns, or some or one of them shall and will without any Defalcation, Deduction, or Abatement of any thing for any Tithes, Taxes, Charges or Payments whatfoever, ordinary or extraordinary, well and truly pay, or cause to be paid to the said J. P. his Executors, Administrators or Assigns, at such Times and Place, and in fuch Manner and Form as is herein afterwards expressed, the full Sum of 1500 l. of, &c. in Gold or Silver, and also Interest or Consideration for the for- And Interest bearance thereof, after the Rate of 61. for 'till Repayevery 100 l. by the Year, for all the Time, from the Day of the Date of this present Indenture, until the faid 1500 l. shall be so paid (that is to fay) If the faid 7. P. his Executors, Administrators or Affigns, or any of them shall on any Day, &c. of Nov. or, &c. Day of May, between the, &c. Day of May, which shall be in the Year of our Lord God, 1660, and the, &c. Day of May, which will be in the Year of our Lord, 1662, give

L.M. Martin Dally

Notice of Payment at any Time within fix Months.

or leave Notice in Writing, at or in the faid now Mansion-House of the said A. B. called by the Name of &c. unto or for the faid A. B. his Heirs, Executors, Administrators or As figns, of Payment to be made of the faid 1500 l. at the End of fix Months, then next after the giving or leaving fuch Notice, or to that Effect: Or if the faid A. B. his Heirs, Executors, Administrators or Atligns, or any of them, shall on any, &c. Day of Nov. or, Esc. Day of May, between the faid Day of. &c. which will be in the Year of our Lord 1660, and the said, &c. Day of May, which will be in the faid Year of our Lord, 1662. give or leave Notice in Writing, at or in the now Dwelling House of the faid 7. P. in, &c. unto or for the faid 7. P. his Executors, Administrators or Assigns, for Payment to be made of the faid 1500 l. at the Erd of fix Months then next after the giving or leaving such Notice or to that Effect: Then in either of those Cases, whensoever any such Notice shall be so given or left as aforesaid, by either or any of the said Parties, the faid Sum of 15001. Shall be paid unto the faid 7. P. his Heirs, Executors, Administrators or Assigns, at or in the said now Dwelling-house of the said J. P. in, &c. as afore faid, on the, &c. Day of May, or &c. Day of Nov. which will be at the End of fix Months, next after such Notice shall be given or left, as aforesaid: But if no such Notice for the Payment of the faid 1500 l. shall be by either, or any of the faid Parties fo given or left. as aforesaid, before the said - Day of May, which will be in the faid Year of our Lord 1662, then the faid Sum of 1500 l. shall be paid unto the faid 7. P. his Executors, Administrators

ministrators or Affigns, at or in the faid now Dwelling house of the said 7. P. upon the said - Day of May, which will be in the faid Year of our Lord 1662, without any further

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And the faid Interest or Consideration for Interest to be the Forbearance of the faid Sum of 1500 l. paid by half after the Rate aforesaid, shall from Time to ments. Time be well and truly paid at the faid Dwelling-house of the said J. P. by equal half-yearly Payments of 45 l. upon every Day of Nov. and - Day of May in every Year, until fuch Time as the faid 1500 l. shall be paid according as it is herein before covenanted to be paid; and at what Time soever the said 1500 l. shall happen to be paid, all the Interest shall be paid for Forbearance thereof, after the Rate aforesaid proportionably for all the Time, from the Time of the then last half yearly Payment before, until the Day of Payment of the faid 1500 l.

And the faid 7. P. for himself, his Execu-Administrators and Assigns, and for every of them, doth covenant, promise and agree, to and with the faid A. B. his Heirs and Affigns by these Presents. That until some Default shall be made of, or in Payment of the faid Money herein before covenanted to be paid, or of some Part thereof, he the faid 7. P. his Heirs, Executors, Administrators and Assigns, shall and will permit and fuffer the said A. B. C.D. E. F. G. H. and every of them, their and every of their respective Heirs, Executors Administrators and Affigns, according to their respective Estates and Interests in the Premisses, before the Sealing of these Presents, peaceably and

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quietly to hold and enjoy all and fingular the faid Manor-House, &c. and Premisses whatfeever, with their and every of their Appurtenances, and to receive, take and enjoy all the Rents and Profits thereof, to their and every of their own Use and Uses, without the Lett, Suit, Trouble, Interruption, Eviction, or Ejection of the said 7. P. his Executors. Administrators or Assigns, and without any Account to be given unto the faid 7. P. his Executors, Administrators or Assigns for the same. Provided always, and it is hereby conditioned, granted, covenanted, concluded and agreed by and between the faid Parties to these Presents, for them their Heirs, Executors and Assigns, that if the said A. B. his Heirs, Executors, Administrators or Affigns, or any of them shall well and truly pay or cause to be paid unto the said 7. P. his Executors, Administrators and Asfigns, the faid Sum of 15601. and all fuch Interest or Consideration for Forbearance thereof, as aforefaid, in fuch Sort, Manner and Form as the same is herein before covenanted to be paid; that then from and immediately after such Payment made, this present Indenture, and all and every the Term and Estate hereby made and granted, or mentioned to be made or granted, shall cease, determine, become and be void fruftrate and of Non-Effect to all Intents and Purposes: With usual Covenants.

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Prefidenti

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Presidents of Assignments. Lands mortgaged for the Term of 500 Tears, and by Afignment (indorfed) assigned to Trustees in Trust for the Mortgagee; and further Sums borrowed and lecured by Alignment thereof.

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HIS Indenture made, &c. between A. B. of, Esc. of the first Part, C. D. of, &c. of the fecond Part, E. F. of, &c. of the third Part, and G. H. of, &c. and J. K. of, &c. of the fourth Part: Whereas C. S. of, &c. Recital of a Efg. by Indenture of Lease bearing Date, Demise, Bar-Esc. —— made or mentioned to be gain and sale made between the faid C.S. of the one Part, and the faid A. B. of the other Part, for the Consideration of the Sum of 1000 l. of. &c. therein mentioned to be paid by the faid C.S. by the said A. B. did grant, bargain and fell unto the faid A. B. all that Manor, &c. To hold the same until the said Indenture of Leafe, for and during, and until the full End and Term of 500 Years, paying yearly one Pepper Corn if demanded, with and under a Proviso of being void upon the said C. S's Payment of 1045 l. upon the Days, and at the Place in the said Indenture mentioned, as by the faid Indenture of Leafe, Relation being thereunto had more at large may appear; which faid Term of Years was by Affignment, bearing Date on or about Day of, &c. was transferred unto 0.0. P. Q. and R. S. their Executors, Administrators and Affigns, in Trust for the faid which was A. B. and was afterwards by Indenture Qua- affign'd in dri partite, bearing Date on or about the of July Instant, made or mentioned to be made between the faid O. O. P. Q. and R. S. of

for 500 Years.

the first Part, the said A. B. of the second Part. Sir W. R. Kt. and T. O. of the third Part, and the faid E. F. of the fourth Part. transferred and affign'd by the faid O. O. P. 9. and R.S. by the Confent and Direction of the faid A.B. unto the faid Sir W. R. and T.O. in Trust for the said E. F. and to prevent the drowning of the faid Term, and to the Intent that the same may be kept on Foot for the Benefit of the faid Termers, as by the Assignments may appear: And whereas by Indenture Tripartite bearing Date the. bec. made or mentioned to be made between the faid C. S. of the first Part, the said C. O. of the second Part, and the faid A. B. of the third Part, the said C. S. for the Consideration of 400 l. of, &c. to him paid by the faid C. D. did promise and agree that the Sum of 424 l. mentioned in the Condition of a certain Obligation, bearing even Date with the faid last recited Indenture, wherein the faid C. S. is bound to the faid C. D. and all Interest for the same, that should at any Time or Times then after be lawfully due, should stand secured unto the said C. D. his Executors, Administrators and Assigns, by the Equity of Redemption of the faid recited Mortgage as by the faid Indenture appeareth, which said Indenture and Bond, and the 400 l. and Interest thereby secured is fince affign'd to the faid A. B. as by the faid Affignment appeareth. And whereas the faid C. S. did afterwards borrow and receive of the faid A. B. the further Sum of 100 l. for which he became bound to the faid A. B. by his Obligation of 200 l. bearing Date, &c. conditioned for the Payment of the faid 100 l. and Interest unto the said A. B. his Executors,

Money on Bond fecur'd by the Equi ty of Redemption. ed

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Frecutors and Administrators, upon the Day of then next following, and by his Writing under his Hand and Seal, bearing A further Sum even Date with the faid Obligation, did agree borrowed to that the faid Sum of 1001. and Interest stand secured should fland secured by the faid Mortgage: Morigage. And whereas the faid C. S. did afterwards borrow and receive of the faid A. B. the further Sum of 800 l. for which he became bound unto the faid A. B. by his Obligation of 1600 l. bearing Date the, &c. conditioned for the Payment of 8001. and Interest unto the faid A. B. his Executors Administrators or Assigns, upon the Day next ensuing, as by the faid Obligation appears: And whereas by Indenture. Tripartite, bearing Date on or about the Day of, &c. made or mentioned to be made between the said C. S. of the first Part, the said A. B. of the second Part, and the said C. D. and X. T. of, &c. of the third Part: It was agreed. That as well the faid feveral Sums of 1000 l. 100 l. and 800 l. owing to the faid A. B. as aforefaid, in the whole amounting to 1900 l. and all Interest for the same, as also the said Sum of 400 l. to the said C. D. All the Sum and all Interest for the same should be fur- secured by a ther secured by a Fine to be levied by the faid C. S. of the Premisses, and of a certain Park called, &c. and of all other Lands and Tenements of the faid C. S. in the County of, &c. It was by the faid Indenture covenanted, that the faid C. S. should before the End of Trinity Term then next enfuing, levy. &c. to the faid C. D. and X. T. and the Heirs of the said C. D. &c. which said Fine so to be levied should be and enure, and should be confirmed, deemed and taken to be, and enure,

by the faid

vivor of them and his Heirs should from henceforth stand, and be feised of the faid

Proviso.

Manor and Premisses, and of the said Park and all other the Lands, Tenements and Hereditaments of the faid C. S. in the faid County of S. to the Use and Behoof of the faid A. B. his Executors, &c. for the Term of 100 Years, without Impeachment of Waste. to commence from the Date of the first recited Indenture, the Remainder to the faid C.S. his Heirs and Affigns for ever; provided nevertheless, and the said A. B. did thereby covenant, that if the said C. S. his Heirs or Affigns, should pay or cause to be paid unto the faid A.B. the faid Sum of 1957 1. and also the said Sum of 4121. unto the faid C. D. at the Time and Place in the faid Indenture mentioned, that then the faid A. B. C. D. and X. T. should reconvey the faid Manor and Premisses, and the said Park unto the said C. S. and his Heirs, as by the said Indenture amongst other Covenants more at large appeareth: And whereas the faid C. S. did levy a Fine accordingly, but did not pay the faid 1900 l. and 400 l. principal Money, or any Part thereof according to the faid Proviso in the faid last recited Indenture, whereby the Estate of the said A. B. in the faid Premisses, became absolute. And whereas the faid C.S. together with Sir M. B. Kt. entred into and acknowledged a Recognizance, bearing Date, &c. unto 7. C. Gent. in the Penalty of 400 h conditioned for the Payment of 2001. which was fince affigned unto MI. Esq. and the faid C. D. in Trust for the faid A. B. And whereas there is now justly due to the faid

A. B.

Recognizance affigned.

A. B. the Sum of 2300 l. principal Money. and 86 l. 5 s. for Interest of the same, which amounts in the whole to the Sum of 23861. s. Now this Indenture witnesseth, That for and in Confideration of the faid Sum of 2386 1. 5 s. of, &c. to the faid A. B. and Affignment 5 s. of like Money to the faid C. D. by the of the whole. faid E. F. in Hand paid, at and before the Sealing and Delivery of these Presents, the Receipt of which faid several Sums, they the faid A. B. and C. D. do hereby respectively acknowledge, and thereof, &c. they the faid A. B. and C. D. have, and each of them hath bargained, fold, assigned and set over, and by these Presents, do bargain, sell, asfign and fet over unto the faid E. F. her Executors, Administrators and Assigns, all that Manor, &c. and all and fingular the Lands and Premisses in the said first recited Indenture of Mortgage mentioned; and also all the Park called, &c. and all other the Lands, Tenements and Hereditaments of the faid C. S. in the faid County of S. and the Reversion and Reversions, Remainder and Remainders, and all other their Right. Title and Interest, Claim and Demand whatfoever, of, in and to all and fingular the faid Premisses, and every Part thereof: To have and to hold the same unto the said E. F. her Executors, Administrators and Assigns, from the Date of these Presents, for and during all the rest, Residue and Remainder of the faid Term of 1000 Years, granted by the faid recited Indenture of the 22d of May, 1675. which are yet to come and unexpired, without Impeachment of Waste.

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And the faid A. B. and C. D. M. I. and And of the Bonds and C. D. do hereby affign over unto the faid Recognizan-

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combrances.

E. F. the faid recited Recognizance, Bonds or Obligations, and all and every the Covenants contained in the aforesaid Indenture of Leafe or Mortgages, and all the Benefit of the same, with full Liberty to put the same in Suit in their Names, as they shall be advised for the more speedy and better Recovery of the faid Moneys. And the faid A. B. for himself, &c. doth covenant, promife, and grant, to and with the faid E. F. her, &c. that the faid Sum of 2386 1. 5 s. is justly due and owing unto him by the faid Free from In. C.S. and that he the faid A. B. hath not made any former or other Grant, Bargain, Sale or Assignment of the said Manor and Premisses, or any Part thereof, nor done, or wittingly or willingly suffered any Act Thing whatfoever, whereby the fame Premisses, or any Part or Parcel thereof, are or may be any way impeached, charged or incumbred in Title, Charge, Estate, or otherwife, except the aforefaid Affignment made to the aforesaid O.O. P. D. and R.S. of the before mentioned, and faid Manor of his and their Affignment thereof to the faid Sir W. R. and T. O. in Trust for the said E. F. And the said C. D. for himself, &c. doth covenant and grant to and with the faid E. F. &c. That he the faid C. D. hath not made any former or other Grant, Bargain, Sale or Affignment of the faid Manors and Premisses or any Part thereof, nor done nor wittingly or willingly suffered any Act or Thing whatfoever, whereby the same Premisses, or any Part or Parcel thereof, or may be any way impeached, charged or incumbred in Title, Estate, or otherwise, except the before recited Assignment of the said Debt of 400 l. and

and Interest, and the said recited Bond and Indenture, whereby the same is secured and made to the said A. B. as herein before is set forth. In witness, &c.

Mortgage of the Lease of a Parsonage, Glebe, Tithe, &c. for securing 450 h and Interest, and also an Annuity of 50 l. per Annum during the Life of one of the Mortgagees, with Covenant to renew the Lease in the Name of the Mortgagees, or the Survivor of them, within seven Tears, if the Annuity Man be then living or any Part of the Money unpaid; the new Lease to be charged with Fine and Expences of renewing.

THIS Indenture Tripartite made, &c. 1 between A. B. of, &c. of the first Part, C. D. of &c. of the second Part; and E. F. of, Egc. of the third Part. Whereas the Dean and Chapter of St. Paul's by their Indenture of Lease under their Common Seal, bearing Date, &c. did grant, demise, and to Farm let unto the faid A. B. all that the Parsonage of &c. To have and to hold unto the faid A. B. his Executors, Administrators and Assigns from, &c. unto the full End and Term of 21 Years from thence next ensuing, and fully to be compleat and ended, at and under the yearly Rent of 221. 101. and Corn payable by fuch Quantity, and Rate, and Time as therein are mentioned, as in and by the faid recited Indenture of Leafe, Relation being thereunto had it may more at large appear. Now this Indenture witneffeth, That the faid A. B. for and in Performance on his Part of certain Articles. in an Agreement Tripartite indented, bear-

ing Date, &c. made between the faid C. D. of the first Part, the said A. B. of the second Part, and the faid E. F. of the third Part. and for the securing the Sum of 450 l. of lawful Money of England, and the Interest thereof in such Manner as is herein after mention'd. And also for the securing of one Annuity or yearly Sum of 60 l. unto him the faid C.D. during the Term of his natural Life, hath granted, bargained, fold, affign'd and fet over, and by these Presents doth grant, bargain, fell, affign and fet oven unto the faid C. D. and E. F. as well the faid recited Indenture of Leafe, and the said Parsonage of, &c. and Apputenances whatfoever by the said Indenture of Lease demised; as also all the Estate, Right, Title, Interest, Use, Trust, Profit, Property, Reversion, Tenant-Right, Claim and Demand what soever of him the faid A. B. his Executors and Administrators, of, in and to the same, to have and to hold the faid recited Indenture of Leafe, Parsonage, Glebe Land, Tithes, &c. and all and fingular other the Premisses herein before granted, bargained, fold, affigned and fet over, or meant, mentioned, or intended to be herein and hereby granted, bargained, fold, affigned and fet over, and every Part and Parcel thereof, with their and every of their Appurtenances, unto the faid C. D. and E. F. their Executors, Admini-Strators and Assigns, from henceforth, for and during all the Residue and Remainder of the faid Term of 21 Years, in and by the faid recited Indenture of Leafe granted, which are now thereof to come and unexpired, and fully to be compleat and ended. Provided always, and these Presents are upon Condition

tion nevertheless. That if the said A. B. his Executors, Administrators and Assigns do and shall well and truly pay or cause to be paid unto the faid C. D. and E. F. their Administrators and Assigns the full Sum of, &c. in Manner and Form following, &c. And also upon this further Consideration, if the faid A. B. his, &c. do and shall yearly and every Year during the Term of the natural Life of him the faid D. S. well and truly pay or cause to be paid unto the said C.D. or his Assigns, at or in the, &c. one Annuity, Annual or yearly Sum of 60 l. of lawful Money of England, at the four usual Feasts or Quarter-Days in the Year (viz.) the, &c. by even and equal Portions, and that without any Deduction, Defalcation or Abatement whatfoever, for or by Reason of any Taxes, Rates, Affestments or Impositions now or hereafter to be laid, rated, affeffed, taxed or imposed upon the faid Annuity or yearly Sum of 60 l. or upon him the faid C. D. or his Assigns, in Respect thereof, the first Quarterly Payment thereof to begin and to be made on, &c. that then and from thenceforth and at all Times afterwards, this Indenture shall be void and of none Effect to all Intents and Purposes, as if the same had never been made, and the faid recited Indenture of Leafe shall be re-delivered to him the said A. B. safe, whole, and uncancelled; This Indenture or any Thing contained to the contrary thereof in any wife notwithstanding. And the said A. B. for himself, his, &c. and for every of them doth covenant and grant to and with the faid A. B. and C. D. and either of them. their and either of their, &c. by these Pre-

fents in Manner and Form following (that is to fay) That he the faid A. B. his. Foc. shall and will well and truly pay or cause to be paid unto the faid C. D. and E. F. their. Esc. the said Sum of Esc. by the several Proportions (Part thereof to the faid C. D. and Part thereof to the faid E. F. as aforefaid) Sum and Sums of Money, and on the feve ral Days and Times herein above limited and appointed for Payment thereof without any Deduction as aforefaid: And also shall and will well and truly pay or cause to be paid unto the C. D. his, &c. the faid Annuity or yearly Sum of 601. yearly and every Year, during the natural Life of the faid C. D. at the Place aforesaid, on the several Feafts and Quarter Days herein before limited or appointed for Payment thereof. and that without any Deduction, Defalcation or Abatement as aforesaid, according to the true Intent and Meaning of these Prefents, and that from and after Default shall be made of or in Payment of the faid Sum of. &c. or any Part thereof on the Days and Times herein before limited, or of or in the Payment of the faid Annuity of 60 l. or any Part thereof, on any the Feafts or Quarter Days herein before limited, in any of the faid Cases it shall and may be lawful to and for the faid C. D. and E. F. or either of them unto whom Default shall happen to be made of Payment of any the Sum or Sums of Money or Annuity herein before mentioned to be paid and payable, his and their Executors, Administrators and Assigns, into and upon the faid Parsonages, &c. to enter, and the Rents, yearly or other Profits, &c. with

out the Lett, &c. and that free and clear. Esc. and of and from all other Estate Titles, Troubles, Charges and Incumbrances whatfoever (the Rent and Covenants in the faid recited Indenture of Leafe contained, and which after the actual Entry of them the faid C. D. and E. F. or either of them, their or either of their, &c. shall on the Tenant's or Lessees Part and Behalf grow due to be paid, done and perform'd, only excepted and foreprized) then from and after Default of fuch Payment as aforefaid (a Covenant for further Affurance) to them or the Surviyor of them, &c. And moreover the faid A. B. for himself, his, &c. and for every of them, doth by these Presents covenant, grant and agree to and with the said C. D. and E. F. and either of them, their and either of their. &c. that he the faid A. B. his. &c. shall and will within the Time and Space of feven Years from the Feaft Day of, &c. last past, before the Date of these Presents, or sooner, at his or their own proper Cofts and Charges take a new Leafe, or renew the Term, Estate and Interest of and in the faid Parsonage, Glebe Lands, Tythes and Premisses for the full Term of Twentyone Years from the Date of fuch new Leafe. at and under the same Rents and Covenants as are by the faid recited Indenture of Leafe now referved and contained in the Name or Names of them the said C. D. and E. F. or the Survivor of them, or the Executors or Administrators of such Survivor, in case the faid C. D. shall be then living, or any of the faid Sum or Sums of Money herein before mentioned shall then remain unpaid in Trust, first for securing the Payment of so much and

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and fuch of the faid feveral Sum and Sums of Money with Interest for the same, as then shall remain due and unpaid, and subject to the Payment of the faid Annuity during the Continuance thereof, and of all the Arrears thereof. And from and after Payment and Satisfaction of the faid Sum and Sums of Money and Interest and Payment of the said Annuity during the Continuance thereof, and of all the Arrears of the same in Trust for the said A. B. his Executors, Administrators and Affigns. And it is likewise hereby covenanted and agreed by and betweeen all the faid Parties to these Presents, That in case the said A. B. his, &c. or any of them shall at any Time hereafter before the faid feveral Sum and Sums of Money and Interest to be paid, and whilft the faid Annuity continues, or any Arrears thereof remain unpaid, refuse or neglect to renew fuch Leafe. Effate. Term or Interest in the said Premisses within the Time aforesaid, according to the true Intent and Meaning of these Presents, but shall fuffer the faid feven Years to elapse, that then it shall and may be lawful to and for them the faid C. D. and E. F. and the Survivor of them, or the Executors or Administrators of such Survivor, from and after any fuch Refusal or Neglect to surrender up the present Lease, Estate and Interest in the said Premisses, and to renew or take a new Lease thereof in his or their own Name or Names, and the faid Lease and Premisses shall be charged and chargeable with all fuch Fine and other Charges and Expences which they the faid C. D. and E. F. or either of them, their or either of their, &c. shall or may fustain or be put unto, for, touching or concerning

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cerning the renewing of fuch Leafe, and shall not be redeemed, or redeemable, till the fame with Interest, or Damages for Fobearance thereof, be fully paid and satisfied: This Indenture, or any Thing herein contained to the contrary thereof in any wife notwithstanding. And further, it is hereby declared and agreed by and between all the Parties to these Presents, That as often as the faid Lease shall be renewed, the same shall. at all Times immediately from and after the renewing thereof, be subject and liable to the Trufts, Intents and Purposes aforesaid. and to no other Use, Intent or Purpose whatfoever.

Covenant for quiet Enjoyment, till Default of Payment.

Assignment and Proviso, then a Release of the Proviso or Equity, and then another Assignment with another Proviso, and a Release of Equity; and at last the whole Bargain assigned on a new Proviso, well drawn.

THIS Indenture Tripartite made, &c. between A.B. of, &c. of the first Part, C. D. of, &c. of the second Part, and E. F. of, &c. of the third Part. Whereas by Indenture bearing Date, &c. made between the faid C. D. and S. C. of, &c. of the other Part, for the Considerations therein mentioned, the faid C. D. did demise, grant, bar- Demise, Bargain and fell unto the faid S. C. all that gain and Sale Farm, &c. To have and to hold the faid Mef- recited. fuage with the Appurtenances, and the faid several Closes, &c. thereby demised, with their

their and every of their Appurtenances unto

Proviso.

Forfeited.

Affignment recited.

the faid C. D. his Executors, Administrators and Ailigns, from the Day of the Date of the faid Indenture of Demile, for and during the Term of 500 Years from thenceforth next enfuing, and fully to be compleat and ended, upon Condition nevertheless (and fo recite the Proviso, &c.) which said Sum of, Ec. was not paid at the Time or Days limited in the faid Proviso, nor at any Time fince, whereby the faid Term of 500 Years granted as aforesaid to the said S. C. became absolute in Law. And whereas by Indenture Tripartite, bearing Date, &c. made between the faid C. D. by the Name of, &c. of the first Part, the faid S. C. of the second Part, and the faid A. B. of, &c. of the third Part; the faid S. C. in Consideration of the Sum of, &c. to him in Hand paid by the faid A. B. and of the further Sum of, &c. of like lawful Money by him in Hand paid to the faid C. D. the faid S. C. did grant, bargain, fell, affign, and fet over unto the faid A. B. (by the Direction of the faid C. D. testified by his being a Party to these Presents) all and fingular the said Farm, &c. together with the said first recited Indenture, and all the Estate, Right, Title, Interest, and Term of Years then to come and unexpired, claim and demand whatfoever of him the faid S. C. his Executors, Administrators and Assigns, of in and to the Premisses; and also all such Deeds, Evidences and Writings concerning the faid Premisses or any Part thereof, which he the faid S. C. then had in his Cuftody or Power, or were in the Custody of any other

Person or Persons in Trust for her. To have

and to hold the same unto the said A. B. his

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Executors.

Executors, Administrators and Assigns, from the Day next before the Day of the Date thereof, for and during all the Keft, Residue, and Remainder of and in the aforesaid Term of sco Years then to come and unexpired. And the faid C. D. for the Confiderations Release and aforesaid, did in and by the said recited In-Confirmation denture Tripartite, grant, bargain, sell, of Redemprelease, ratifie and confirm unto the said tion recited. A.B. his Executors, Administrators and Asfigns, all the faid Estate, Right, Title, Interest, Property, Condition, Power of Redemption, Claim and Demand of him the faid C. D. either in Law or Equity, of, into, or out of the said Premisses. To be had and holden unto the faid A. B. his Executors, Adminifirators and Assigns, for and during all the Rest and Residue of the said Term of 500 Years then to come and unexpired, upon Condition nevertheless, That if the said C. D. Proviso. his Executors, Administrators or Assigns, should pay, or cause to be paid unto the said A.B. his Executors, &c. the Sum of, &c. of lawful Money of England at the Days and Times, and in such Manner and Form as is therein mentioned, then the faid A.B. his Executors, Administrators or Assigns, should reconvey, affign and affure all and fingular To Reconvey. the faid Premisses with their Appurtenances, and all his and their Right, Title and Interest therein and thereunto unto the said C. D. his Executors, Administrators or Assigns, or fuch other Person or Persons as he or they should nominate and appoint, freed and difcharged, or otherwise saved harmless and kept indempnified of and from all manner of Incumbrances had, made, committed, done, or suffered by him the said A. B. his Execu-

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tors or Assigns, or any of them, as in and by the faid last recited Indenture, &c. which faid Sum of, &c. was not paid, whereby the Remainder of the faid Term of 500 Years, granted as aforefaid unto the faid A. B. is become absolute in Law. Now this Indenture witnesseth, That the faid A. B. for and in Consideration of the Sum of, &c. of lawful Money of England, to him in Hand paid by the faid E. F. by the special Direction and Appointment of the faid C. D. testified by his being made a Party to these Presents. and by his figning and fealing of the fame, and of the further Sum of, &c. of like lawful Money to the faid C. D. in hand likewise paid by the faid E. F. at or before the Sealing and Delivery of these Presents, the Receipts of which faid feveral Sums of Money, they the faid A. B. and C. D. do hereby refpectively acknowledge, and thereof, and of every Part and Parcel thereof, do hereby for themselves respectively, and for their respective Heirs, Executors and Administrators. release, acquit and discharge the said E.F. his Executors, Administrators and Assigns, and every of them for ever by these Presents, he the faid A. B. by the Direction and Appointment of the faid C. D. testified as aforesaid, hath granted, bargained, sold, assigned and set over, and by these Presents doth grant, bargain, fell, affign and fet over unto the faid E. F. all that Farm, &. and all the Estate, Right, Title, Interest, Term of Years, Property, Claim and Demand whatfoever of him the faid A. B. of in or to the said, &c. with their and every of their Appurtenances, and every or any Part or Parcel thereof, together with the faid two recited

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recited Indentures. To have and to hold the said Farm, &c. with their and every of their Appurtenances, and every Part and Parcel thereof, unto the faid E. F. his Executors, Administrators and Assigns, from henceforth, for and during all the Residue and Remainder of the faid Term of 500 Years therein to come and unexpired. And the faid C. D. for the Confiderations aforesaid, doth ratifie, approve, and confirm unto the faid E. F. the faid Farm, &c. and all other the Premisses herein before mentioned, with their and every of their Appurtenances; To have and to hold the said Farm, &c. with their and every of their Appurtenances, unto the faid E. F. his Executors, Administrators and Affigns, from henceforth, for and during fo many Years of the faid 500 Years as are yet to come and unexpired, without Impeachment of or for any manner of Waste; and doth also for the Considerations aforesaid. remise, release, and for ever quit Claim Release of Eunto the faid E. F. all Conditions of Redemp- quity of Retion, and all Right, Power and Equity of demption. Redemption of the said Farm, &c. with the Appurtenances, by Virtue of any Indenture or Deed of Defeafance, or by Virtue of any Covenant, Clause or Condition of Redemption in any Indenture. Deed or Writing contained, or otherwise howsoever, wherein he hath Right and Power to release such Equity of Redemption. Provided always, and upon Condition neverthelels, That if the faid C. D. his Heirs, Executors, Administrators or Assigns, or some or one of them, do, and Provito. shall well and truly pay, or cause to be paid, unto the faid E. F. his Executors, Administrators or Affigns, the full and just Sum

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of, &c. of lawful Money of England, at or in the &c. in Manner and Form following: that is to fay, Pounds, Part thereof, at, or upon the Day of next enfuing the Date of these Presents, and the Refidue, and in full Payment of Sum the faid Sum of at or upon the Day of which shall be in the Year of our Lord God without making any Deduction, Defalcation, or Abatement out of the same for any manner of Taxes, Impositions or Assessments whatsoever, that then and from thenceforth, this present Indenture, and the Grant, Bargain and Sale hereby made shall cease, determine, and be utterly void; Any Thing herein contained to the contrary thereof in any wife notwithstanding; and that then also the said E. F. his Executors, Administrators and Re-assure, Assigns, shall transfer and assign unto the faid C. D. his Heirs, Executors, Administrators or Afligns, or to fuch other Person or Release of E. Persons, as he or they shall nominate or appoint, all his Interest, Estate and Term of onky of Re-Years of and in the faid Farm, Uc. and Premisses, with their Appurtenances to him hereby granted as aforesaid. And the said C. D. for himself, his Heirs, Executors and Administrators, doth covenant, promise and grant, to and with the faid E. F. his Executors, Administrators and Assigns, and to and with every of them by these Presents, That he the faid C. D. his Heirs, Executors or Administrators, some, or one of them, shall and will, we'll and truly pay or cause to be paid, unto the said E. F. his Executors, Adminiftrators and Affigns, the faid Sum of at the Days, Times and Place before men-

tioned

Covenant to pay.

object in authority this bay

tioned or appointed in the faid Proviso for the Payment thereof, in Manner and Form aforefaid, without making any Deduction, Defalcation, or Abatement whatfoever.

C. D. covenants that he and A. B. or one of them, have good Right, Power and Au-

thority, Esc.

And for quiet Enjoyment, free from In- Enjoyment cumbrances, after Breach of the Proviso, and freed of the Equity of Refurther Assurance discharged of the Proviso demption. aforesaid, and of all Provito's, Conditions and Agreements whatfoever, for or concerning the Redemption of the Premisses, or any Part

thereof, as by the Counsel. &c.

Nevertheless it is declared and agreed by and between the faid Parties to these Prefents. That in the mean Time, and until Breach of the faid Proviso, it shall and may be lawful, to and for the faid C. D. his Executors, Administrators or Assigns, peaceably and quietly, to have, hold, occupy, posses, and enjoy the said Farm, &c. with their and every of their Appurtenances, and to receive, and take the Rents. Issues and Profits thereof, to his and their own Use and Uses. without the lawful Let, Suit, Trouble, Interruption. Claim or Demand of the faid E. F. his, &c. And the faid A. B. for himself, his Heirs, Executors, Administrators and Affigns, doth covenant, promise and grant, to and with the faid E. F. his Executors, Administrators and Affigns, and to and with every of them by these Presents, that for and notwithstanding any Act, Matter or Thing by him the faid A. B. had, made, committed, done or fuffered to the contrary. the faid two recited Indentures, and the faid

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Covenant that the recited Indenture is good.

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Term of 500 Years thereby granted, and hereby affigned and confirmed unto him the faid E. F. now are, remain and continue in full Force and Virtue, unforfeited, unfurrendred, or any Ways made void or annihilated : and also that the said A. B. hath not made. committed, &c. whereby the faid Premisses may be impeached, charged, &c.

Covenant on Payment of Money on Such a Day, then to assure Lands, not to be taken as a Mortgage, but as an absolute Sale if the Money be paid at the Day.

tild in dissillations

HIS Indenture made, &c. between A.B. of, Esc. of the one Part, and the Right Honourable W. Lord P. of the other Part; Recital. Whereas by one Indenture bearing Date, the, &c. and by one other Indenture, bearing even Date with these Presents, both of them made between the faid W. Lord P. of the one Part, and the faid A. B. of the other Part, the faid Lord P. for the Confideration of Pounds of Gc. therein mentioned; Hath granted, bargained, fold and conveyed, or made Mention to grant, bargain, sell and convey unto the said A. B. his Heirs and Affigns; All that Manor or Lordship of, &c. as in and by the said Indenture, Relation being thereunto had, it may more at large appear. Now this Indenture Witnesseth, That it is covenanted, granted, concluded and agreed, by and between the faid Parties to these Presents, and the faid A. B. for himself, his Heirs, Executors, Administrators and Assigns, doth covenant, promise and grant, to and with the

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faid W. Lord P. his Heirs and Affigns by these Covenant, Presents, that if the said Lord P. his Heirs, that the other Executors, Administrators or Assigns, or any paying so of them do, and shall well and truly pay, or shall have cause to be paid unto the said A. B. his Exe- such an Estate cutors or Administrators, the full Sum of affured to

Pounds of, &c. upon the Day of O. him. next ensuing the Date of this present Indenture, in, or at the Common Dining-Hall, of Sc. that then he the faid A. B. his Heirs or Assigns, shall and will at any Time within one Year, next after such Payment made, as aforesaid, at, and upon the reasonable Request and proper Costs and Charges in the Law of the faid W. Lord P. his Heirs or Affigns, well and fufficiently convey and affure unto the faid W. Lord P. by fuch good and fufficient Conveyances and Affurances, as the faid W. Lord P. his Heirs or Affigns. or his or their Council learned in the Law, shall be reasonably devised or advised, all and fingular the said Manor of, &c. Hereditaments and Premisses whatsoever, which in and by the faid recited Indenture, or either of them, are conveyed unto the faid A. B. and his Heirs, as aforesaid, free and clear from all Incumbrances had, made or done, or to be had, made or done by the faid A. B. his Heirs or Affigns. And yet nevertheless. it is hereby declared and fully agreed, by and between the faid Parties to these Presents, yet not to be for them and their Heirs, That the faid Con- taken in the veyances made by the faid Lord P. to the faid Nature of a Mortgage, nor A.B. as aforefaid, or these Presents were not, to give any nor are intended, nor shall be taken or con- Equity of Refirmed to be in the Nature of a Mortgage, or demption, Security for Money in any wife, or to give and not to be any equitable Right, Trust, or Liberty of accomptable for the Profits

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Redemption of the Premisses unto the faid

Lord P. or his Heirs; neither shall the faid

A. B. his Heirs or Affigns, be any Ways ac-

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Nor shall the Vendor be compellable to pay the faid Money.

comptable for the Profits of the faid Manor, The seal thank Esc. and Premisses unto the faid W. Lord P. end the stand his Heirs or Affigns, in Case he or they shall ter berille make Payment of the faid Sum of Pounds, at the Day and Place before mentioned; neither shall the said Lord P. his Heirs. Executors or Administrators, be any Way compellable in Law or Equity to pay the faid Money, the same being left to his and their free Choice, whether he or they will pay the fame or not: And in Cafe he or they shall not pay the same upon the said Day of, &c. now next enfuing, then the faid A.B. his Heirs. Executors or Administrators. shall not be compellable to accept the same. nor to make any Reconveyance at all of the faid Manors. Lands and Premisses: It being agreed between the faid Parties, and hereby acknowledged by the faid Lord P. that the faid Sum of Pounds, paid by the faid A. B. is the full and true Value of the faid Manor and Lands, and not Money lent, but paid by the faid A. B. for the absolute Purchase thereof; Only it is agreed, that the said Lord P. his Heirs or Assigns, shall have an Election and Power to have it again, if he or they shall pay the said Sum of

He shall have Election to pay it at that Time, but not at another Time,

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Pounds, at the Place aforesaid, upon the faid, &c. Day of M. next ensuing the Date hereof; but shall not have Liberty to pay the same at any other Time. And in Case the faid Lord P. or his Heirs, Executors or Administrators, shall not pay the faid Sum of, &c. at the Day and Place aforefaid, then he the faid Lord P. for himfelf and his Heirs, hereby Redemp till Fermens.

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hereby disclaim all Suits in Equity. Neither shall nor will he or they, be relievable in any Court or Courts of Equity, or elfewhere. concerning the Premisses, nor feek to have again the faid Manor or Lands, or account for the Profits thereof: But he the faid Lord P. his Heirs and Affigns, upon the Request and Act. &c. of the faid A. B. his Heirs and Affigns, after the faid Day of in Case the said Sum of. Gr. be not then paid, shall and will make such other, or furfurther Release, or other Conveyances for absolute releasing of his and their Right, Title and Interest in Law or Equity, of, in and to the faid Premisses unto the faid A. B. his Heirs and Affigns, as by the faid A. B. his Heirs or Assigns, or his, or their Council learned in the Law shall be reasonably required. And it is further agreed, by and between the faid Parties to these Presents, that if the said Money be not paid upon the said, &c. Day of &c. next. That then this prefent Indenture under the Hand and Seal of the faid Lord P. shall be delivered up to the faid A.B. his Heirs or Affigns, to be cancelled.

Assignment of a Mortgage for Tears, which was forseited; wherein the Mortgageor is made a Party, and confirms the Assignment and Estate, with a surther Proviso of Redemption by the Assignor.

THIS Indenture Tripartite, made the, &c. Day of, &c. between A. B. of, &c. of the first Part, C. D. of, &c. Executors of the last Will and Testament of O. O. of, &c. deceased, on the second Part, and E. F. of, &c. on the third Part: Whereas the said A. B. by

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by his Indenture bearing Date the, &c. for the Consideration therein mentioned, did demile, grant, bargain and fell unto the faid O. O. All that, &c. all which faid Lands and Premisses are situate, lying and being within the Parish of, &c. in the County of, &c. and all and fingular Ways, &c. whatfoever to the faid Lands, or any Part thereof in any wife belonging or appertaining, or accepted, reputed, taken or known as Part, or Parcel of the same, or of any Part thereof; and the Reversion and Reversions, &c. To have and to hold the faid Lands, &c. unto the faid O.O. his Heirs, Executors, Adminiftrators and Affigns, for and during the Term of 500 Years from thence next enfuing, without Impeachment of, or for any manner of Waste, yielding and paying therefore yearly one Pepper-Corn, &c. In which Indenture there is a Proviso or Condition to this Effect (that is to fay) provided alway, and upon Condition, that if he the faid A.B. his Heirs, Executors or Affigns, or any of them, did, or should well and truly pay, or cause to be paid unto the said O. O. his Executors, Administrators or Affigns, the full and just Sum of 530 l. of lawful Money of England, in Manner and Form as therein is expressed (that is to say) the Sum of 15 l. (Part thereof) upon the first Day of &c. next ensuing, after the Date of the faid Indenture, and the Sum of 515 h (Residue thereof) upon the, &c. both the said Payments to be made at or in, &c. without any Defalcation, or Abatement to be made out of the faid Sums, or either of them for Taxes, or for any other Cause, Matter or Thing whatfoever, that then the faid Indenture, and the Estate thereby made should

should cease, determine, and be utterly void, any Thing therein contained to the contrary in any wife notwithstanding, as in and by the faid Indenture, and the Proviso therein contained (Relation being thereunto had) more at large may appear. And whereas Default was made in Payment of the faid Sums of 530 l. at the Days and Place in the faid Proviso mentioned, so as the Estate and Term for 500 Years, of and in the faid Parcels of Ground, &c. and Premisses, became absolute unto the said O. O. And whereas also the said O. O. did afterwards make his last Will and Testament, and did constitute and appoint the said C. D. sole Executor thereof, and shortly after died. Now this Indenture Witnesseth, That for, and in Consideration of the Sum of. &c. of lawful, &c. being the full Money, Principal and Interest now due upon the faid Lease and Estate, to the said C. D. and of 5 s. of like lawful Money to the faid A. B well and truly in Hand paid by the faid E. F. before the Sealing and Delivery of these Presents. the Receipt of which faid feveral Sums they do hereby respectively acknowledge, and thereof do acquit and discharge the said E. F. and for other good Confiderations them thereunto moving, the faid C. D. by and with the Direction and Appointment of the faid A. B. teftified by his being made a Party hereunto, and his Sealing and Delivery thereof, Hath bargained, fold, aliened, affigned and fet over, and by these Presents doth bargain, fell, alien, affign and fet over unto the faid E. F. all and fingular the beforementioned Parcels of Land, &c. in and by the faid recited Indenture intended to be demised

demised and granted to the faid O.O. deceased, his Executors and Administrators and all the Estate, Right, Title, Interest, Term for Years, Claim and Demand what. foever of him the faid C. D. by Force and Virtue of the faid recited Indenture, as Executor to the said O.O. or otherwise how. foever, together with the faid Indenture And the Reversion and Reversions, Remainder and Remainders of the faid Premisses, and all yearly and other Rents, and Profits referved upon any Demise made of the faid Premisses, or of any of them, To have and to hold the faid Parcels of Ground, &c. before mentioned and intended to be hereby affigned, with their and every of their Appurtenances, together with the faid Indenture, unto the faid E. F. his Executors and Administrators, for, and during all the Residue and Remainder of the faid Term of five Hundred Years, in and by the faid recited Indenture mentioned to be granted, yet to come and unexpired, in as full, ample, and beneficial Manner, to all Intents and Purposes as he the faid C. D. might have enjoyed the same by Force and Virtue of the faid recited Indenture, as Executor to the faid O. O. or otherwise. And the faid C. D. for himself, his Heirs, Executors and Administrators, doth covenant and grant to and with the faid E. F. his Executors and Administrators by these Presents, That neither the said O. O. during his Life, nor the said C. D. fince his Death, or either of them respectively, did, or hath at any Time heretofore committed, suffered or done any Act, Matter or Thing whatfoever, whereby the faid Premisses, orany of them, are, or may be impeached,

ed, or incumbred in Title, Charge, Estate, or otherwise howsoever. And the said A. B. for the Confiderations aforesaid, hath ratified and confirmed, and by these Presents doth ratifie and confirm unto the said E. F. all those the before-mentioned and intended to be hereby affigned Lands, &c. and Premisses, with their and every of their Appurtenances, To have and to hold the fame unto the faid E. F. his Executors, Administrators and Affigns, during the Residue of the said Term of 500 Years hereby affigned yet to come and unexpired, discharged of the said Proviso or Condition, and of all equitable Right and Interest from Redemption of the same in Law or Equity; Provided always, and it is the true Intent and Meaning of these Presents, and the said E. F. for himself, his Executors and Administrators, doth covenant and grant to, and with the faid A.B. his Heirs and Assigns by these Presents, That if he the faid A.B. his Heirs, Executors or Administrators, or any of them, shall well and truly pay, or cause to be paid unto the faid E. F. his Executors or Administrators, the full and just Sum of 530 L of lawful, &c. in Manner following (that is to fay) 15 l. Part thereof, on the Day of shall be in the Year of our Lord God and 515 l. Residue thereof, on the then next following, both the faid of Payments to be made in the common Dining-Hall of Grays Inn in the County of Middlesex. without any Defalcation of Taxes, or for any other Cause or Thing whatsoever, that then he the faid E. F. his Executors and Administrators, shall and will assign, transfer, and fet over unto the said A.B. his Heirs or Affigns,

Assigns, or to such Person or Persons as he or they shall nominate and appoint, all those the said Parcels of Land, &c. and Premisses before mentioned, and intended to be hereby assigned with their Appurtenances, and all his Estate, Right, Title and Interest in or to the same, discharged of all Incumbrances by him, or by any Person or Persons claiming, or to claim from, by, or under him, done or suffered in the mean Time.

Covenant that the Affignor will pay the Money.

Covenant that the Lease is, and shall be in

Force for quiet Enjoyment.

After Default of Payment, that the Affignee

shall take the Profits.

Covenant for further Assurance, after Breach of the Proviso: Assignor to take the Profits till Breach.

The Vendee would purchase the Estate, and he hopes to raise the Money speedily. Vendor covenants, That if the Vendee, or other Person by his Order, pay, &c. at two Payments. To convey the Land, and to hold the Premisses till sirst Payment, provided upon Default, to yield up the Possession of the Premisses.

THIS Indenture made, &c. between A.B. of, &c. of the one Part, and C.D. of the other Part, Witnesseth, That whereas the said A.B. is right Owner, and seised of the Manor or Lordship of L. with the Rights, Members and Appurtenances thereof, in the County of O. formerly the Inheritance of E.D. deceased, Father of the said

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faid C. D. and that absolutely free and clear of and from all manner of Right, Title, Claim and Interest of the said C. D. and his Heirs, or any Pretence thereto either in Law or Equity, being minded at this Time to fell the same, and to depart therewith, whereof the said C. D. taking Notice, and having an earnest Desire, as he pretendeth, that some of his Kindred, Friends, or near Acquaintance may have the Refusal thereof; and having, as he likewise affirmeth, some Hopes speedily to effect the same, at the Rate of 5000 L being the Price fet and pitched by the faid A. B. for the Purchase thereof. Now to the Intent and Purpose that it may appear to fuch as the faid C. D. shall notify the same to be a Reality, and not a Fiction of his own. the faid A. B. at the Defire of the faid C. D. doth for himself, his Heirs, Executors and Administrators, covenant, promise, condefeend and agree to, and with the faid C. D. his Heirs and Assigns, That in Case the said C. D. or any other Person or Persons by him the faid C. nominated and appointed under his Hand and Seal in Writing for that Purpofe, shall well, truly and punctually pay, or cause to be paid unto the said A. B. his Heirs and Affigns, the full Sum of 5000 l. at the Day, Times and Place hereafter mentioned, that is to fay, the full Sum of 100 l. of lawful, &c. upon the Day of ensuing the Date hereof, at, or in, &c. between the Hours of Two and Four of the Clock in the Afternoon of the same Day, upon the Condition hereafter expressed and declared, and also the further Sum of 4900 L of like lawful Money, at one whole and entire Payment in, &c. as aforefaid, upon the Day

Day of next enfuing the Date of these Presents, without Fraud, Covin and Delay, that then upon the said several Payments duly, truly and punctually made as aforesaid, and not before or otherwise, he the faid A. B. shall and will at the Request, Costs and Charges in the Law of the faid C. D. or fuch his Affign or Affigns, convey the faid Premisses and Manor in Fee-simple, unto the faid C. D. or to such Person or Persons as he the faid C. D. shall so nominate and appoint, in fuch Sort. Manner and Form, as by his, or their Council learned in the Law, shall be reasonably devised and advised, discharged, or otherwise upon Request freed and kept harmless of and from all Incumbrances had, made, committed or done by the faid A. B. or E. B. deceased, Father of the said A. or either of them, or any Person or Persons claiming by, from or under them, or either of them, fo as fuch Conveyance, or Conveyances, do not contain any other or further Covenants than what are expressed in these Presents, or any other Warrants than against the faid A. and E. B. and their Heirs, and fo as the said A. and his Heirs, be not compelled to travel further than the Cities of London and Westminster, for the doing or making thereof. And also that he the said A. B. shall and will, after the full, just and punctual Payments of the faid feveral Sums as aforesaid, deliver, or cause to be delivered to the faid C. D. or fuch his Affign or Affigns, all fuch Deeds, Evidences and Writings, Transcript, Statutes, Obligation, and other Specialties whatfoever, touching and concerning the faid Manor and Premisses, or any of the Lands of the faid C. D. or chargeable

able against the said C. D. as are in the said A. B. his Custody or Keeping. And also confent to the Delivery of what are in the Custody and Keeping of any other Person or Persons in Trust for him the said A. B. and E. B. and by the Delivery or Appointment of them, and either of them. And for a surther Motive and Inducement to the said C. D. for his doing his best Endeavour to effect the same, the said A. B. doth surther condescend and agree, That the said C. D. or such Assign or Assigns shall, and may from henceforth, until the said

Day of next ensuing the Date hereof, being the Day appointed for the Payment of the said 100 l. as aforesaid, have, hold and enjoy the Premisses; and upon the due and punctual Payment of the said 100 l. on the Day, Time and Place as aforesaid (and not else or otherwise) shall and may have, hold and enjoy the Premisses until the said

Day of next ensuing the Date hereof, being the Day appointed for the Payment of the said 4900 l. and to take the Rents, Issues and Profits thereof during such Time, to his or their own Use or Benefit, without rendring any Account for the same.

Provided always, and upon Condition, That during such Time as the said C. D. or such his Assign or Assigns, shall enjoy the said Premisses as aforesaid, by Virtue of these Presents, he the said C. D. or such his Assign or Assigns, do not willingly conceal, permit or suffer any Waste, Strip or Destruction, in, or upon the said Manor and Premisses, or any Part or Parcel thereof.

Provided also, and upon Condition, That upon Default of any of the Payments aforesaid, on the Day, Time and Place aforesaid. faid, or any Part thereof, in Manner and Form as aforesaid, unto the said A. B. his Heirs or Assigns, whether of them shall first happen, either on the said Day of Day of if he the or on the faid faid C. D. or fuch his Affign or Affigns, shall not immediately from and after such Default deliver and yield up' the peaceable and quiet Possession of the said Manor and Premisses and every Part and Parcel thereof, unto the faid A. B. his Heirs or Assigns, without any manner of Molestation or Disturbance, Fraud. Covin or Delay, than this present Indenture, and all herein contained, shall be utterly void,

and of none Effect.

Provided always, and upon Condition, That if the faid C. D. or fuch Assign or Affigns, shall not duly and punctually observe, perform, fulfil and keep all and every of the Payments, Conditions, Clauses and Agreements herein contained, according to the true Intent and Meaning of these Presents, That then this present Indenture, and all herein contained, shall utterly be void and of none Effect; and that then, and from thenceforth, it shall and may be lawful to, and for the said A. B. his Heirs or Assigns, to enter in and upon the faid Manor and Premisses and the faid C. D. or fuch his Affign or Affigns, and all and other Person and Persons whatfoever, by all lawful Ways and Means to remove, expel and put out, any Thing herein contained to the contrary thereof in any wife notwithstanding.

And it is expressed and mutually declared by these Presents, That the said 100 l. to be paid on the said Day of next ensuing the Date of these Presents, shall be

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paid upon this Condition, That upon the Default of the due and punctual Payment of the said 4900 l. on the Day, Time and Place as aforesaid, that then the said A. B. his Heirs and Assigns, is, and are to have and keep the said 100 l. in Lieu and sull Satisfaction of all the Rents, Issues and Profits of the said Manor and Premisses from the Day of last past, before the Date hereof, unto the said Day of next ensuing the Date hereof, Sc.

Conveyance by Way of Mortgage, to be void on the Mortgageor's discharging such Debts as the Mortgagee is Surety for him.

Rovided always; and upon Condition. That if the faid A. B. (the Mortgageor) his Executors and Administrators, or any of them, shall, and do well and truly content. latisfy and pay, or cause to be contented. fatisfied and paid, all and every fuch Sum and Sums of Money, which the faid C. D. (the Mortgagee) as Surety, and together with, and for the faid A. B. is, and standeth bound to pay to any Person and Persons whatsoever, either by Obligation, Bill, Specialty, Promife, or otherwise howsoever, according to the true Intent and Meaning of fuch Specialties, Promises, Contracts and Engagements; and shall, and do at all Times hereafter, well and fufficiently discharge and keep harmless, and indempnify the faid C. D. his Heirs, Executors and Administrators, and his and their Bodies, Goods, Chattels, Lands and Tenements, and every of them, of and from all Suits, Damages, Costs, Charges and Expences

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pences which he or they may be at, or fustain by Means or Reason of such Suretiships, by Specialty, Promise, Contract or Engagement, That then and from thenceforth, it shall and may be lawful to, and for the said A. B. his Heirs or Assigns (or his Executors, Administrators and Assigns, if it be a Demise for Years) into the said Premisses, with the Appurtenances wholly to reenter, and the same to have again, re-possess and enjoy, as in his or their former Estate, any Thing herein contained to the contrary notwith standing.

Security (by Mortgage) for Money Lent, or to be Lent.

HIS Indenture Tripartite, made, &c. between A. B. of, &c. of the first Part, C. D of. &c. of the second Part, and E. F. of the third Part, Witnesseth, That the said A.B. for and in Consideration, and to the Intent and Purpose that the said C. D. and E. F. and either of them, and the Heirs, Executors, Administrators, or either of them, shall and may be well and truly satisfied, paid, contented and faved harmless, of and from all and fingular fuch Sum and Sums of Money, as they the faid C.D. and E.F. or either of them have heretofore lent or delivered to the faid A. B. or to any other Perfon or Persons, to or for his Use, or by his Request, Order or Agreement, or which they the faid C. D. and E. F. shall at any Time, or Times hereafter, lend or deliver to the said A. B. or to or for his Use, or by his Order or Request : And also of, and for all such Bills, Obligations and Debts, which they the

the faid C. D. and E. F. or either of them, have heretofore made, entered into, or contracted, or hereafter shall make, enter into and contract, joyntly with the faid A. B. for his proper Debt or Debts, or at his Request, hath demised, granted, and to Farm Letten, and by these Presents doth demise, grant, and to Farm Let unto the faid C. D. and E.F. All that, &c. To have and to hold all the said, &c. unto the said C. D. and E. F. their Executors, Administrators and Assigns. from the Feast, &c. for and during, and unto the full End and Term of Ninety Nine Years, from thence next enfuing, and fully to be compleat and ended, yielding and paying therefore yearly during the said Term, unto the faid A. B. his Heirs and Assigns, the Sum of 101. of lawful, &c. at the first of St. Michael the Archangel, and of the Annunciation of the Bleffed Virgin, by even and equal Portions. Provided always, and upon Condition, that if he the faid A. B. his Executors, Administrators or Assigns, or any of them, do and shall well and truly pay, or cause to be paid unto them the said C. D. and E. P. their Executors, Administrators or Affigns, or to any of them, all and fingular fuch Sum and Sums of Money, as they the faid C. D. and E. F. or either of them heretofore have lent, or delivered by Way of Lending to the faid A. B. or to any other Perfon or Persons, to or for his Use, or by his Order, Direction or Request, or at any Time hereafter shall lend or deliver, to or for the Use of the said A. B. or to any other Person or Persons, by his Order or Request; and alfo all and fingular fuch Sum and Sums of Money as now are, or shall be mentioned L 4

in any Bend, Bill or Obligation, or any other Specialty, Contract or Writing whatfor ever, which the faid C. D. and E. F. or either of them heretofore have made, entred into. or contracted, or hereafter shall make, enter into, or contract joyntly with the faid A. B. and for his proper Debt, or at his Request, together with all fuch Costs, Charges, Losses and Damages whatfoever, which they the faid C. D. and E. F. or either of them, their or either of their Heirs, Executors or Administrators, shall be at or sustain, for, or by Reason of any such Sum or Sums of Money. Bills, Bonds, Obligations, or Contract aforefaid, or any of them, either with the Rents. Issues and Profits of the Premisses hereby demised, or by him the said A. B. his Executors, Administrators or Assigns, or any of them, or by any other Ways or Means whatfoever, that then, and from thenceforth, this present Lease, Grant and Demise, and every Matter, Clause and Covenant herein contained, shall cease, determine, and be utterly void, and of no Effect; and that then. and from thenceforth, he, the faid A. B. his Executors, Administrators and Assigns, into all and every the faid demised Premisses, with the Appurtenances, shall and may peaceably enter, and the same have again, retain, repossess and enjoy, any Thing herein contained to the contrary notwithstanding.

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A Grant of Lands by Letters Patents for 60 Tears assigned in Trust to pay Debts; the Trustees in Consideration of Marriage, and 60001. Portion with the Heir secure by Assignment, a Joynture to be made within three Tears.

L Etters Patents recited: And whereas riage to be had and folemnifed between the faid A. B. and the Lady M. one of the Daughters of L. M. &c. and there being Propositions made on the one Part for Joynture, and of the other Part for Portion, the faid L. M. hath declared his Intention to give for the Marriage Portion of his faid Daughter the Sum of 6000 l. in Case a loynture of 1200 l. per Annum could be made and fettled, or fecured to be fettled upon the said Lady M. but the Estate of the said E.W. stands so as no fuch Joynture can at present be made: And whereas the Premisses are trusted for the Payment of Debts (if the Father dv'd) and the Trustees have Power to fell the said Premisses for that Purpose. Upon Consideration of all which Premisses, it hath been concluded and agreed by and between all the faid Parties to these Presents, that all the faid 6000 l. Portion should be paid to the faid (Truftees) for and towards the Payments of the faid E. W. (the Father) according to the Trust in them reposed, and that the said Leases, &c. and other the Premisses before mentioned should be conveyed to the said, &c. in such Sort as are herein after mentioned, to be conveyed for the fecuring

curing a Joynture of 1200 l. per Ann. to be made to the faid Lady M. in Manner as is herein after mentioned, and thereupon the faid L. M. hath accordingly paid and fecured to be paid the faid 6000 L Portion. Now this Indenture witnesseth. That the faid (Truftees) for and in Confideration of the Sum of 6000 l. of lawful. &c. to them in Hand paid and secured to be paid by the said L. M. at and before, &c. to be disposed of, for and towards the Payment of the Debts of the faid E. W. according to the faid Truft in them reposed, the Receipt and Security of all which faid Money the faid (Truftees) do hereby acknowledge, and thereof, &c. and for divers other good Causes and Confiderations them moving, have bargained, fold, affigned and fet over, and by thefe Presents, &c. unto the faid L. M. H. B. their Executors, Administrators and Assigns, all and fingular, &c. together with the faid recited Letters Patents, and all Deeds of Affignment only thereof, and all other Charters, Writings, Evidences, Escripts and Muniments, touching and concerning the faid Premisses only, or only any Part thereof, Habendum, &c. Provided always and upon this Condition nevertheless, that if the said H.W. W.W. and T. W. or any of them, or any of their Heirs, or any other Person or Persons, by their or any of their Appointment or Procurement, shall at any Time or Times within the Space of three Years next ensuing the Date of these Presents, by good and fufficient Conveyance and Affurance in the Law, well and fufficiently convey, affure and fettle a good and indefeafable Estate of Inheritance in the Law, unto or upon

upon the faid Lady M. for and during the Term of her natural Life, for and in the Name of her Joynture, of and in any Manors, Lands, Tenements or Hereditamenrs of a good Title, being not Rent charge, Rectories nor Tithes, and within the Kingdom of England, which then shall be of the clear vearly Value of 1200 l. of lawful, &c. (above all Charges, Incumbrances and Reprifes, iffuing and going out of the same) to take Effect in Possession, either from and immediately after fuch Assurance within the Time aforefaid made, or from and immediately after the Death of the said &c. or if the said Lady M. shall happen to die in the mean Time within the faid three Years, That then, and from thenceforth in either of the said Cases, this present Indenture and the Grant and Assignment, herein contained, shall cease and become void.

Covenant that be bath not done any Ast,

A Grant of Lands for 500 Tears, for securing an Annuity during the Mortgagee's Life, or an entire Sum.

THIS Indenture made, &c. between A.B. of &c. of the one Part, and E.B. of, &c. in the County of &c. on the other Part witneffeth: That the faid A.B. for and in Confideration of the Sum of 10 s. of lawful, &c. and for divers other good Causes and Confiderations him hereunto moving, hath demised, granted, bargained, sold, and to Farm letten, and by these Presents doth demise.

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mife. Uc. unto the said E. B. all. Uc. fiv tuate, lying, and being within the Town. Hamlet, Parish, or Manor of G. in the County of, &c. now in the Tenure or Oc. cupation of, &c. his Assigns or Under-Tenants, together with all and fingular Hedges. Hedge-rows, Fences, Ditches, Mounds, Paths. Paffages, Ealments, Profits, Commodities, Advantages, Enrolments and Hereditaments whatfoever, the faid feveral Parcels of Ground belonging, or in any wife appertaining, or reputed, or taken as Part or Parcel of the same, and the Reversion and Reversions, Remainder and Remainders of the said Premisses, and all yearly and other Rents and Profits whatfoever, referved upon any Demile made of the same, or of any Part of them. To have and to hold the faid feveral Parcels of Arable Lands, &c. before mentioned, or intended to be hereby demifed, bargained and fold with their and every of their Appurtenances, unto the faid E. B. his Executors, Administrators and Assigns. for and during the Term of 500 Years, from henceforth next enfuing, and fully to be compleat and ended, without Impeachment of or for any Manner of Waste, yielding and paying therefore yearly during the faid Term, the Rent of one Pepper-corn only, on the Feast Day of St. Michael the Archangel, if the same shall be lawfully demanded. Provided always, and upon Condition nevertheless, that if the said A. B. his Heirs, Executors or Affigns, shall well and truly pay, or cause to be paid unto the said E. B. or his Affigns, the yearly Rent or Sum of, &c. of good and lawful Money of England, for and during so many Years of the said Term, as the

William Profession

the said E. B. shall happen to live at two Feafts or Days of Payment in the Year (viz.) The Feaft of the Nativity of St. John Baptiff, and the Birth of our Lord by equal Portions, the first Payment to begin at the Feaft of the Nativity of St. John Baptist next enfuing the Date of these Presents, That then this present Indenture, &c. Provided also, and upon Condition that if the said A. B. his Heirs, Executors or Administrators, or any of them shall well and truly pay, or cause to be paid unto the said E. B. or his Assigns, the full and just Sum of, &c. of good and lawful Money of England at one entire Payment, at any Time during the natural Life of the faid E. B. That then also this present Indenture and the Estate. hereby made shall cease, determine, and be utterly void, any thing herein contained to the contrary, in any wife notwithstanding. And the faid A. B. for himself, his Heirs. Executors and Administrators, and for every of them, doth covenant, promise and grant, to and with the faid E. B. his Executors or Administrators, by these Presents, that he the faid A. B. his Heirs, Executors or Administrators, or some of them, shall and will well and truly pay or cause to be paid unto the said E.B. or his Affigns, the faid yearly Rent or Sum of, &c. of lawful Money of England, until the said Sum of, &c. shall be truly paid and fatisfied unto the faid E. B. or his Affigns, by the faid A. B. his, &c. according to the true Intent and Meaning of these Presents.

Covenant that the Grantor is seised in Fee, That he has full Power and Authority. Covenant for quiet Enjoyment.

Grants

Grants of Fee Farm Rents, Tithes, and the Same mortgaged.

[I have in this Prefident found feveral Recitals not very common, specially retaining to the Fee-Farm Rents, granted in King Charles the Second's Time, by an Act of Parliament.

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Recite the Letters Patents.

THIS Indenture made the, Esc. between A. B. of, &c. of the one Part, and C. D. of &c. of the other Part : Whereas the late King James by his Letters Patents bear. ing Date the &c. in the Year of his Reign (amongst other Things) did grant to E.P. of &c. and to R.M. of &c. their Heirs and Assigns for ever, all that Rectory and Church of K. in the County of L. with its Rights, Members, and Appurtenances whatfoever, by the Particulars thereof of the Annual Rent of, &c. and the Advowfon, Donation, Free Disposition and Right of Patronage, of the Vicarage of the Parish Church of K. aforesaid, to the said Rectory of K. belonging, appertaining, appendant or incumbent; to be holden of the aforefaid late King, his Heirs and Successors, as of his Manor of East-Greenwich in, &c. in free and common Socage, rendring therefore yearly to the faid King, his Heirs and Succeffors, at the Feast of, &c. by even and equal Portions by Fee-Farm Rent, or yearly Rent of & And whereas the faid late King James by his Letters Patents bearing Date the, &c. (amongst other Things) did grant to the said E.P. and R. M. their Heirs and Affigns for ever, all the Rectory and Church of &c. in the

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the County of &c. with all and fingular its Rights, Members and Appurtenances whatfoever, by the Particular thereof, of the annual Rent or Value of, &c. iffuing out of the Rectory, and yearly paid to the Archdeacon of L. and his Successors for a perpetual Procuration and Synodal. And the Advowson. Donation, Disposition and Right of Patronage of the Vicarage of the Parish Church of W. aforefaid, to the faid Rectory of D. belonging. appertaining, incident or incumbent, to be holden of the aforesaid late King James, his Heirs and Successors, as of his Manor of, Sc. in free and common Socage, rendring therefore yearly at the Feaft of, &c. by equal Portions the Fee-Farm or yearly Rent of, &c. And it is mentioned in the Particular thereof, That there was yearly payable out of the faid Rectory of D. by the Fee Manor of the faid Rectory to the Archdeacon of L. the yearly Sum of &c. And whereas the faid late King James by Letters Patents bearing Date the, &c. (amongst other Things) did grant to E. P. and R. M. their Heirs and Affigns for ever, all that the Common with its Rights, Members and Appurtenances whatfoever, and all Houses, Edifices, Structures, Barns, Stables, Dovehouses, Orchards, Pomaries, Gardens, Lands, Meadows, Feedings, Pastures, Glebe Lands, Tithes of Grain, Lambs and Hay, and other Tithes as well great as small; and also Oblations, Obventions, Fruits, Profits, Commodities, Emoluments and Hereditaments what loever, fituate and being, growing or renewing in the Towns, Fields, Parishes or Hamlets of, Esc. or in any or either of them in the faid County of L. to the said Rectory of L. otherwise

Certificates by Truffees in the Act mentioned-

in the Exchequer.

G. in any Manner belonging or appertaining by Particular thereof of the annual Rent of Ec. To be holden of the faid late King Famer, his Heirs and Successors, as of his Manor of East-Greenwich in the County of Kent, &c. in free and common Socage, ren. dring therefore yearly at the Feafts of &c. by equal Portions the Fee-farm Rent or year-Iv Rent of, &c. as by the Particulars of the Premisses certify'd to the Trustees by the Acts of Parliament authorised under the Hand of T. P. Auditor, according to the Direction of the faid Acts, and remaining with the Register of the said Trustees, and as by the faid several Letters Patent, Relation being to themrespectively had, may more at large appear. And which faid feveral yearly Rents and Fee-farm Rents iffuing out of the faid Rectory of D. and every of them, were by Deed indented bearing Date the, &c. by T.C. Truftees E. C. C. C. R. L. and N. L. fome of the Grant. Trustees appointed by the said several Ass of Parliament, granted and conveyed to the faid A. B. his Heirs and Assigns for ever, as in and by the faid recited Indenture, and in-Deed inrolled rolled in the publick Exchequer, remaining in the Custody of the second Remembrancer of the faid Exchequer, Relation being thereunto had may more at large appear. And whereas the faid late King James by his Letters Patents dated, &c. did grant to R. S. his Heirs and Affigns, in Fee-Farm for ever, all that, &c. payable yearly at the Feafts of &c. the Fee-farm Rent or yearly Rent of &. as by the Particular thereof certified to the faid Trustees by the Hands of T. H. Deputy Auditor, according to the Direction of the faid Acts, and remaining with the Register to the

the faid Trustees, and as by the said Letters Patents, Relation being thereunto had, may more at large appear. And which faid yearly Rent or Fee farm Rent of, &c. was by Deed indented, bearing Date, the, &c. made by N. S. J. S. R. S. J. H. some of the said Trustees, granted and conveyed to the faid A. B. his Heirs and Affigns for ever, as by the faid Deed inrolled as aforefaid may appear. Now this Indenture witnesseth, That the faid A. B. for and in Confideration of Esc. of lawful English Money to him in Hand paid at and before the Sealing and Delivery of these Presents by the said C. D. the Receipt whereof he the faid A. B. hereby acknowledgeth, and thereof and of every Part and Parcel thereof, acquitteth and dischargeth the faid C.D. his Heirs Executors and Administrators for ever, by these Presents hath granted, Bargain and bargained, fold, demised, and to Farm letten, Sale of the and by these Presents doth for himself, his Premisses. Heirs and Assigns, bargain, sell, demise, and to Farm let unto the faid C. D. the aforefaid Fee-farm Rents or yearly Rents of, &c. and every of them, by and upon the faid Letters Patents severally reserved, and the said several recited Deeds indented granted as aforefaid, and all Penalties, Benefits of Forfeitures. Nomine pana's, Diffreffes, Powers and Conditions of Re-entry, or Re-detainers by the aforefaid Letters Patents, or any of them referved for or by Reason thereof, or incident or belonging thereunto; and all Liberties, Powers, Actions Suits, Ways and Means for and Means of the Recovery of the faid yearly Rents and Recovery of Premiffes, and every or any of them, by Rea- the Fee-farm or Vertue of the faid Acts of Parliament, or Rents, &c. any of them, or the faid Letters Patents, or

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any Govenant, Grant or Refervation, Provision or Conditions therein mentioned or contained, or by Vertue of the faid feveral Deeds made by the faid Truftees as aforefaid. or any Thing therein contained; and all other Liberties, Privileges, Advantages, Commodities and Appurtenances whatfoever, which the faid A. B. his Heirs or Affigns, or any other Person or Persons to his or their Use may have or claim by Vertue of the faid Letters Patents, or Deeds indented, or by the faid Acts of Parliament, or any other Ways whatfoever; and all the Right, Title, Power, Interest. Claim and Demand what soever the faid A. B. his Heirs and Affigns, of and to the faid feveral yearly Rents, issuing and payable as aforesaid, together also with the fame Deeds, to have and to hold the aforefaid feveral Rents or Fee-farm Rents hereby granted, bargained and fold, and every Part and Parcel thereof referved and payable as aforesaid; and all Benefits, Penalties of Forfeitures. Nomine Pana's, Advantages of Difiress. Liberties and Powers to distrain, and to deliver, fell or dispose of the same, and all Powers and Conditions of Re-entry for Non-payment of the faid feveral Rents, and all Actions, Suits, Ways and Means for the Recovery of the aforesaid hereby granted feveral Rents, by Reason or by Vertue of the aforelaid Acts of Parliament, or of any of them, or of the faid Letters Patents, or of any Grant, Covenant or Refervation, Provifion or Condition therein contained, or of Walnest ban the faid Deeds indented, together with the same Deeds to the faid C. D. his Executors, the Fee farms Administrators and Assigns, to the only Use and Behoof of him the faid C. D. his Executors.

tors, Administrators and Assigns, from the Feast of, &c. last past, before the Date hereof. unto the End and Term of 1000 Years from thence next enfuing, and fully to be compleat and ended, in as full, large and ample Manner and Form, to all Intents and Purposes whatsoever, as the said A. B. his, &c. or Affigns might, would or ought to have had, received or enjoyed the same, by Virtue of the faid Letters Patents, Acts of Parliament, Deeds indented, or any other Act, Law, Ordinance, or Means whatfoever, yielding and paying therefore one Pepper-Corn, &c.

Covenant for quiet Enjoyment (under and according to the Proviso's and Conditions herein mentioned) free and clear, &c.

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Provided always nevertheless, and upon Provise Condition. That if he the faid A. B. his Executors, Administrators or Assigns, shall well and truly pay, or cause to be paid to the said C.D. his Executors, Administrators and Asligns, the Sum of, &c. of lawful Money of England, on the, &c. that then and from thenceforth, the Grant, Bargain, Sale, and Demise hereby made of the Feefarm Rents and Premisses, shall be utterly void and of no Effect. And the faid recited Deeds indented, made by the said Trustees as aforesaid, restored and re-delivered to the said A. B. his Executors, Administrators or Assigns, upon his or their reasonable Demand thereof, safe and uncancelled. And also upon the like Demand this present Deed indented, and Counterpart hereof, and one Obligation of the Date hereof, of, &c, made by the faid A. B. M 2

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To take the Profits till Default of Payment.

to the said C.D. for Payment of, &c. on the Day of Payment aforesaid, and according to the Proviso or Condition, shall mutually be vielded up and uncancelled. Provided alfo, That while and until Default shall be made in Payment of the faid Sum of, &c. contrary to the faid Condition, it shall and may be lawful, to and for the faid A. B. his Heirs and Assigns, to his and their own Use, to have, take, receive and enjoy the Fee-Farm Rents, or yearly Rents, and every of them, without the Let, or Denial of the faid C. D. his Heirs, Executors or Affigns. And laftly it is agreed, That the Place for Payment of the faid Sum of, &c. on the said, &c. shall be at, or in the now Dwelling-House of, &c. In Witnels. &c.

Assignment and Mortgage of Buildings, Leases, and Plots of Ground in London.

HIS Indenture made Day of between A. B. of, &c. of the one Part, and C. D. of Gc. of the other Part: Whereas by Indenture bearing Date the Day of, &c. made or mentioned to be made between T. H. Doctor in Divinity, and the Church-Wardens, and feveral other Parishioners of the Parish, &c. of the one Part, and the faid A. B. of the other Part, they the faid Parson, Church-Wardens and Feoffees for the Confideration therein mentioned, and according to, and in Pursuance of an Order made at W. did demise, grant, and to Farm-Let, unto the said A. B. all that Foundation, and Parcel of Ground, whereupon the late Dwelling-House, &c. was burnt and

Recital of a Leafe from Parson, Church-Wardensand Feoffees of Building Ground.

and confumed by the late dreadful Fire. lately stood, situate, &c. and containing from, &c. and all, and fingular Ways, Paffages, Profits and Commodities whatfoever to the faid Foundation and Parcel of Ground belonging or appertaining, which faid Foundation or Parcel of Ground lieth between the Foundation and Ground of, &c. To have and to hold the faid Foundation, &c. unto the said A. B. his, &c. for and during the Term of, &c. from thence next enfuing, and fully to be compleat and ended, yielding and paying, &c. as in and by the faid recited Indenture of Lease (amongst divers Covenants and Agreements therein contained) more at large it doth and may appear. And whereas the Mayor, Commonalty and Citizens of the City of London, Governors of the Possessions, &c. by their Indenture of Leafe, under their Common Seal, bearing Date, &c. for the Confideration therein mentioned, did demise, lease, grant, and to Farm Let unto the faid A.B. his Executors. Administrators and Assigns, all that their Plot of Ground, with the Appurtenances to the same belonging, situate, in, &c. which Plot of Ground is bounded, set out and described by a certain Plot, or Description thereof, to the faid last recited Indenture annexed, upon which Plot heretofore stood, &c. late in the Tenure or Occupation of. &c. and all Ways, Passages, Lights, Easements, Profits, Commodities, Hereditamens and Appurtenances, to the faid Premisses belonging or appertaining. To have and to hold, all and fingular the faid Plot of Ground and Premisses, by the faid last Indenture of Leafe demised, for and during the Term, M 2

in, and by the said last recited Indenture of Lease, Relation being thereunto had, may more at large appear. And whereas the said A. B. hath lately erected and built upon the said Plots and Parcels of Ground, by the said several recited Indentures demised, two Messuages or Tenements, according to the several Covenants and Agreements therein, particularly contained, now in the several Tenures or Occupations of, &c. Now this Indenture Witnesseth, That the said A. B. for and in Consideration of the Sum of

Houfes built.

The Bargain, Sale and Affignment.

Pounds of, &c. to him in Hand paid by the the said C. D. at, &c. Hath granted, bargained, fold, affigned, and fet over, and by thele Presents doth grant, bargain, fell, asfign, and fet over, as well the faid two feveral recited Indentures of Leafe, and the faid feveral Plots and Parcels of Ground thereby respectively demised, and all Messusges, Tenements and Buildings thereupon erected and built, with their and every of their Appurtenances; as also all the Estate, Right, Title, Interest, Term and Terms of Years to come and unexpired, Property, Claim and Demand what soever, of him the faid A. B. of, in, to, or out of all and fingular the Premisses, and every Part and Parcel thereof, with their and every of their Appurtenances, by Force, Virtue or Means of the faid recited Indenture of Leafe, or either of them, or of any Decree made by the Court of Judicature, &c. To have and to hold the faid Plots and Parcels of Ground, and the faid two erected Messuages or Tenements, &c. from henceforth, for and during all the Rest and Residue of the said several Terms

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Terms of Years, by the faid two feveral recited Indentures of Leafe respectively granted, yet to come and unexpired.

Covenant that the Original Leafes are

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Covenant that the Grantor hath good Right and lawful Authority, &c. to affign, and fet over the faid two recited Indentures of Leafe, and the faid Meffuages or Tene-

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ments, Esc.

Provided always, and upon Condition, Provife. That if the said A. B. his, &c. shall, and do, well and truly pay, &c. without any Default or Abatement to be made, for, or in respect of any Taxes or Affestments whatsoever, to be imposed upon the Premisses, by Authority of an Act of Parliament, or of the Common Council of the City of London, or otherwise howfoever, that then, &c. to be void: And then also the faid C. D. his Executors. Administrators or Assigns, shall and will re-deliver, or cause to be re-delivered up unto the faid A. B. his Executors or Administrators, the faid feveral recited Indentures of Leafe, fafe, whole and uncancelled, for and notwithstanding any Writing or willing Act, And Writings or Thing to be committed or done to the to be delivecontrary, together with that Part of these red up. Presents, which is under the Hand and Seal of the faid A. B. and one Bond or Obligation of the Penalty of 1000 l. entred, or to be entred into by the faid A. B. unto the faid C.D. for the Payment of the faid feveral Sums of Money aforesaid, in Manner and Form aforefaid, and for performing the Covenants and Agreements herein contained. on the Part and Behalf of the faid A. B. his Executors or Administrators, to be holden, 189 M 4

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The Law of Hortgages.

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Upon Default of Payment, the Grantee to enter and enjoy; and that free and clear, and freely and clearly acquitted, exonerafrom Incum. ted and discharged, or by the faid A. B. his Executors, Administrators or Assigns, Sufficiently fecured and kept harmless and indemnified, of and from all and all manner of former and other Gifts, Grants, Bargains, Sales, Leafes, Affignments, Surrenders, Forfeitures, Re-entries, Rents, and Arrearages of Rents. and of and from all and every other Estates, Titles, Troubles, Charges and Incumbrances whatfoever; except the Rents, Covenants and Agreements, in, and by the fail several recited Indenture of Lease, respectively referved and contained, with, from and after such Default of Payment made, shall on the Tenant or Lessees Part and Behalf of the Premisses, grow due to be paid, kept and performed: And also except one Lease by Indenture, bearing Date the, Co. made of Part of the faid Premisses, by and from the faid A. B. unto O. O. of, &c. for the Term of &c. commencing from, &c. for and under the yearly Rent of, &c. of lawful Money of England, thereby referved payable quarterly by equal Portions, which faid yearly Rent of &c. shall and may from and after fuch Default of Payment of the faid Sum of

Pounds, or any Part thereof grow due and payable unto the faid C.D. his Executors, Administrators and Affigns, for and during all the then Rest and Residue of the faid Term of, &c. by the faid Indenture of

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Leafe granted, which shall be then to come and unexpired. And moreover, that until Default shall be made, of or in Payment of the faid Sum of, &c. or any Part thereof at the Place, or on either, or any of the faid feveral Days of Payment thereof above limited contrary to the true Intent and Meaning of these Presents, and until the faid C. D. 'Till Default his Executors and Administrators shall enter of Payment, into, and receive and take the Rents and the Cove-Profits of the Premisses, by Virtue of these nants, &c. Prefents, he the faid A. B. his Executors, Administrators or Assigns, shall and will well and truly hold, pay, perform, fulfil and keep, all and fingular the Rents, Sum and Sums of Money, Payments, Covenants and Agreements, in and by the faid feveral recited Indentures of Lease respectively reserved, contained, mentioned and expressed, which on the Tenant or Leifees Part and Behalf, by Virtue of the said Indenture of Leafe, or by Virtue of any Decree made by the faid Court of Judicature, shall grow due to be paid, done, kept and performed.

Covenant or Agreement, that the Mortgageor may enjoy the Premisses till Default of Payment.

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refault figall be smade, of or, in rayingored Special Covenants in Mortgages. A Claufe if the Money be not paid according to the Provife, The Mortgagee paying a further Sum, Shall bave the Land intirely and for ever. Covenant in Case of Fire, for the Mortgageor to rebuild. Covenant that the Mortgagee shall be quitted of Suits for Waste (wilful Waste excepted.) Covenant that the Mortgageor fall procure Satisfaction upon a Judgment, or elfe the Mort. gagee to pay the Judgment, and to be allowed it. Covenant where are two Mortgages who paid the Money equally, that there shall be no Benefit of Survivorship, and that the Money and Interest shall be equally divided. Estate is purchased, and Part of the Purchase-Money is paid. A Provifo that the Estate shall be void, in Default of Payment of the Purchase Money at the Days limited. Of Redemption of Copyhold Estates. A Mortgage of Copyhold Lands, by Way of Covenant.

A Clause if the Money be not paid according to the Proviso, the Mortgagee paying a further Sum, shall have the Land intirely and for ever.

A ND that in Case the said A. B. his Executors, Administrators or Assigns, do, or shall make any Default of Payment of the said Sum of, &c. or any Part thereof, contrary to the Form of the Condition or Covenant above-mentioned, Then if the said C. D. his Executors, Administrators or Assigns, do, and shall at any Time within the Space of Months, next after any such Default

Default of Payment as aforesaid, well and truly pay, or tender to be paid unto the faid A.B. his Heirs or Affigns, at, &c. a further Sum of 300 l. of, &c. (deducting and defalking out of the same, all such Sum and Sums of Money as shall then be due and payable for the Interest of the said Sum of 500 l. above-mentioned, (That then at any Time afterwards, he the faid A. B. his Heirs or Affigns, shall and will upon the reasonable Request, and at the Costs and Charges in the Law of the faid C.D. his Heirs and Affigns, or any of them, well and sufficiently, and in due Form of Law, grant, release, convey, and affure all and fingular the faid Capital Messuage, &c. and Premisses abovementioned, with their Appurtenances, and all his and their Estate, Right, Title, Interest. Power and Benefit of Redemption, Claim and Demand what soever, of, into and out of the same, and every Part thereof, unto the faid C. D. his Heirs, and Affigns, or to fuch other Person or Persons as he or they shall in that Behalf nominate, direct and appoint, freed and discharged of the Proviso, Condition or Agreement above-mentioned, and of all Power and Benefit of Redemption by fach Affarauce and Conveyance in the Law, as by the faid C.D. his Heirs and Affigns, his or their Council learned in the Law. shall be reasonably devised, advised or required. Nervice the fair benefit to historical

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Covenant by the Mortgageor in Case of Fire, to Re-build.

A ND further, That if by any Accident A of Fire, or otherwise casually, the said Messuages and Premisses, or any of them, shall happen to be ruined or decayed during the Continuance of the respective Leases or Estates, that then the said A. B. his Heirs, Executors or Administrators, or some of them, shall and will with all convenient Speed, cause the same to be new erected and built, in as good a Condition and Plight as the same was before such Accident or Casualty happing.

Covenant that the Mortgagee shall be quitted of Suits for Waste (wilful Waste excepted.)

A ND the faid A. B. for himself, his 1 Heirs, Executors and Administrators. doth covenant, grant and agree to, and with the faid C. D. his Executors, Administrators and Affigns, by these Presents, That the said A.B. his Heirs, Executors or Administrators, or some of them, shall and will acquit, defend, fave, and keep harmless the said C. D. his Executors, Administrators and Assigns, of and from all Suits and Demands what loever, for or by Reason of any Waste hereafter to be committed or fuffered in or concerning the said Messuages, &c. and Premises hereby demiled, or any of them, (wilful Waste to be committed by the faid C. D. his Executors or Affigns only excepted.)

Covenant

Covenant that the Mortgageor Shall procure Satiffaction upon a Judgment, or else the Mortgagee to pay the Judgment, and to be allowed it.

Rovided nevertheless, and it is covenanted and agreed, by and between all the faid Parties to these Presents, That whereas one A. W. did heretofore obtain a Judgment for 1800 l. or thereabouts, against the said A. B. that in Case the said A. B. his Execu-

tors or Affigns, shall not before the

next ensuing the Date of these Day of Presents, procure Satisfaction to be duly acknowledged upon the faid. Judgment, That then it shall and may be lawful, to and for the faid C. D. his Executors and Administrators, to satisfie and pay the same out of the 3000 l. (Mortgage Money) herein before covenanted to be paid, and that so much as shall be so paid by the said C. D. his Executors or Administrators, shall be abated and defalked out of the faid Sum of 3000 l. herein before agreed to be paid, any Thing herein before contained to the contrary in any wife notwithstanding.

Covenant to be free from a Mortgage certain.

ND the said A. B. doth for himself, his Heirs, Executors, Administrators and Affigns, and for every of them, covenant and grant, promise and agree, to and with the faid C.D. his Heirs and Assigns, by these Presents, that the said A. B. his Heirs or Affigns, shall and will within the Space of one Year next enfuing the Date of these Prefents, free, clear, and discharge the said granted

granted or mentioned to be granted Premiffes, and every Part and Parcel thereof, of and from one Mortgage, or Estate heretofore made thereof, amongst other Things, unto Sir T. B. of, &c. or to some other Person or Persons in Trust for him.

A Covenant where there are two Mortgages who paid the Money equally, that there shall be no Benefit of Survivorship, and that the Money and Interest shall be equally divided.

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A N D laftly it is declared and agreed, by A and between the faid A. B. and C. D. (the Mortgagees) and they do mutually covenant and agree each with the other of them by these Presents, That no Benefit shall be had or taken by Survivorship of either of them the faid A.B. and C.D. but that the Survivor of them his Executors or Administrators, shall stand possessed of the said Farm, Lands, Tenements and Premisses, as concerning one equal Moiety, or half Part thereof, in Trust for the Executors or Administrators, or fuch of them as shall happen first to die. And that all Money payable by the faid Proviso, before in these Presents contained, and all Interest, Benefit and Profit to be made thereby by Virtue of these Presents, shall be equally divided between the said A. B. and C. D. and between the Executors, Adminifrators and Affigns of each of them, feverally and respectively, and between the Survivor of them the faid A. B. and C. D. and the Executors or Administrators of them first dying, without any Regard to be had or taken to any Survivorship. Blate

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experiences.

Estate is purchased, and Part of the Purchase-Money is paid. A Proviso, That the Estate shall be void, in Default of Payment of the Remainder of the Purchase-Money at the Days limited.

Rovided nevertheless, and upon this Condition, That if the faid A. B. his Heirs, Executors and Administrators shall not, and do not well and truly pay, or cause to be paid unto the faid C. D. his Executors. Administrators or Assigns, some or one of them, the faid Sum of 500 L of lawful Money of England, being the Remainder or Residue of the faid Sum of 1500 l. before specified, on the feveral Days of Payment hereafter mentioned, and in Manner and Form following. (viz.) the Sum of 100 l. of lawful, &c. on or before the Day of December next enfuing. the Date of these Presents, and the Sum of 200 L. of like Money, on or upon the Day of June, which shall be in the Year of our Lord. Esc. and the further Sum of 200 l. on or before the, &c. being the Residue of the said Sum of 500 L That then and from thenceforth. this present Deed of Bargain and Sale, and every Matter and Thing therein contained, shall be void of none Effect; and that then and from thenceforth, it shall and may be lawful to and for the said C. D. his Heirs and Affigns, into the faid Premisses with the Appurtenances to re-enter, and the same to have again, retain, repossels and enjoy, as in his or their former Estate; Any Thing herein contained to the contrary thereof in any wife notwithstanding. A Bill

A Bill in Chancery was brought to be admitted to Copyhold by the Surrendree (the Lord and Steward being both made Defendants) because no Action on the Case lies against the Lord for not admitting; and this was only to try a Title there; i. e. to enable a Mortgagee to try a Custom there, that if Money be paid after the Day, so as it be before Entry of the Surrenderer made by the Mortgagee, that it is a sufficient Redemption, The Master of the Rolls decreed the Plaintiss should be admitted; but the Court reserved this with the Equity of the main Profits, until Trial of the Custom had in the Manor. 2 Keb. 357. Towell and Corniss.

Redemption by Cuftom.

A Mortgage of Copyhold Land by Way of Covenant.

Recital of the Surrender on Condition.

HIS Indenture made, &c. between A. B. of, foc. of the one Part, and C. D. of, &c. of the other Part, Witnesseth, That whereas the faid A. B. hath now lately furrendred into the Hands of the Lord of the Manor of, &c. by the Rod, according to the Custom of the said Manor, by the Hands and Acceptance of O. O. and P. P. two of the Customary Tenants of the faid Manor. All that Messuage, &c. All which Premisses are Situate in R. in the Parish of, &c. to the Use of the faid C. D. his Heirs and Affigns. To hold according to the Custom of the said Manor, with a Proviso and upon Condition, That if the faid A. B. his Heirs, Executors or Administrators, do and shall well and truly pay, or cause to be paid unto the said C. D. his

his Executors or Administrators, the full Sum of Esc. in Manner and Form following, Esc. then the faid Surrender to be void and of none Effect, as by a Note or Memorandum of the fald Surrender, taken out of the Court the Day of the Date hereof, and hereunto annexed more plainly appeareth. Now the faid A. B. doth covenant and pay the Money. &c. at the Days and Place, and in Manner and Form in the faid Proviso, or Condition of the said Surrender before recited, limited and appointed for Payment thereof. And further the said A. B. for himself, &c. doth Covenant, Esc. to and with the said C. D. his Heirs and Assigns, in Manner and Form following (that is to fay) That he the faid A. B. at the Time of the making of the faid That he is Surrender before recited, had a good Estate feised in Fee, of Inheritance in Fee-fimple, according to the Right. Custom of the said Manor of, &c. of and in all and fingular the faid Meffuages, &c. and Premisses before mentioned, to be surrendred. and had good Right and lawful and absolute Power and Authority in himself to surrender the same, and every Part thereof unto the said C. D. and his Heirs, in Manner and Form aforesaid; and that the same are free from all former Surrenders and Incumbrances whatfoever.

Covenant for quiet Enjoyment, in default of Payment.

Covenant for further Affurance.

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Act and Acts, &c. be it by Fine or comthe faid Manor, Surrender, Release or Confirmation, or all or any of the faid Ways or Means,

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The Law of Wortgages.

Means, or by any other Ways and Means whatfoever, as by the faid, &c.

'Till Default of Payment, the Mortgageor

to take the Profits.

For Cases and Decrees in Equity on Special Covenants, and Agreements in Mortgages. Vide ante Chap. 6.

CHAP. XI.

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Accompt, Interest, Profits. All Money paid as Surety, to be reckoned as principal Money from the Time of Payment. Interest for Interest. Mortgagee assigning, Assignee Shall have Interest for the Interest then due. Interest allowed to the Plaintiff at 5 l. per Centum, and to the Defendant at 61. Interest lost from the Tender. From what Time and how far to Account. Account from the Time of the Purchafe. Account before the Assignment and after. Mortgagee assigns, and decreed to Account for the whole Time. Account so far only as goes in Discount of the Money. Mortgagee of an Estate for Life on an old Mortgage, shall Account for no more than the Estate had been worth to be fold, without Respect bad to the Benefit that bappened by Continuance of Life, but the Parliament upon Appeal directed otherwise. Prior Mortgagee, upon Redemption by the second Mortgagee, to be charged with the Profits received after the second Mortgage. Where Conufee shall account according to the true Value or extended Value. Verbal Agreement after the Mortgage executed. That if the Monies were not paid at the Day, that the Mortgagee should cut the Emblements on the Land: Prays Account, and had it. Bill by several Mortgagees against

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against a pretended Heir in Tail, to discover his Title, and what other Estates and Incumbrances are Prior to the Mortgages to foreclose the Equity of Redemption, and to confirm their Title to the mortgaged Premisses.

Rin. 2 Car. 2. Bridgman Lord Keeper. and Grimfton Master of the Rolls, declared, as a Rule and Course of the Court on Reference, to state an Account upon a Mortgage, That all Money paid as Surety, shall Money paid be reckoned as Principal Money from the be reckoned Time of Payment, and Interest to be al- as Principal lowed according. 2. If Lands in Fee and Money from for Life are joined in Mortgage, if the Fee the Time of be not sufficient at the Time, the Life shall be valued only as it was at the Time, fix or feven Years Purchase, and not according to the Enjoyment since, be it twenty Years or more. 2 Keb. 376. Morley and Elwis in Chancery.

Mich. 26 Car. 2. The Lord Keeper declared it as a Rule on a Mortgage forfeited, the Mortgagee shall have Interest for his Interest, Interest for and shall be only accountable for what Pro- Interest. fits he should receive, and not for what he might have received, unless there be a Fraud,

Chan. Cafes. 258.

It was always the Rule, That the Mort- Mortgagee gagee assigning, the Assignee should have affigning, Af-Interest for the Interest than due, and never have Interest was contradicted but in Porter and Herbert's for the Inte-Case, in Shaftbury's Time. Id. ibidem.

In Holman and Vaux's Case, 13 Jac. the Mortgagee was ordered to account for the Profits received, and for the Use of those

Profits. Totbil. 230.

reft then due.

Interest allow'd to the Plaintiff at 5 l. per Cent. to the Defendant at 6 %

The Chancery seldom allows to the Plaintiff above 4 or 5 l. per Cent. Interest for Money. because he was to reduce the Duty and the Increase, but to the Defendant they usually allowed 6 l. per Cent. because he usually lost fomething besides the Principal. 2 Keb. 187. Some and Parker.

Interest loft

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executives sold

A Mortgageor refusing to receive his Mofrom the Ten- nev on Tender after Forfeiture, shall lose his Interest from the Tender. Chan. Cases, 29. Manning's Case.

From what Time to Account, and how far.

The Azers I we Lands were extended 1 Car. 1. and held in Extent, and a Bill exhibited to redeem, and being not redeemed, the Bill was dismis'd in 16 Car. 1. and afterwards he who had the Extent by Virtue of the faid Dismission, sold the Premisses to the Defendant, but the Plaintiff having fince bought the Equity of Redemption, feek'd a Redemption. The Court notwithstanding the Dismission, and Length Account from of Time, ordered an Account from the Time of the Purchase, but no Account from any Time before, but the Profits to go against the Interest to that Time. 2 Rep. Cb. Cases 392. Cloberry and Symonds.

Time of the Purchafe.

Account before the Affignment and after.

Mortgagee afcount for the whole Time.

In the Case of the Affignment of a Mortgage, the Mortgagee was ordered to Account before the Affignment, and after it. Chan. Cases 3.

Mortgagee after Forfeiture assigns, and defigns, and de- creed to Account for the whole Time, with creed to Ac- the Affignees being made a Party. Ib.

> A Bill was brought 20 Car. 2. to redeem a Mortgage made in 1632. It was infifted by the Defendant, that he came in as Assignee at

the

the third Hand, and it would be hard to put him to Account now, and by the Lord Keeper, in Regard there had been no Stint put to the Time a Mortgage is to be redeemed, the Defendant thall come to an Account: but in regard he comes in at another Hand, Account fo shall not Account but so far only as goes in far only, as Discount of his Money, but not for the Sur- count of the plusage. Ch. Cases 102. Pearson and Pulley. Money. Vide ante 81.

goes in Dif-

Bridgman and Grimfton.

It was held by the Court in Morley and Elway's Case, as a Rule and Course of the Court, on Reference to a Master, to state an Account upon a Mortgage, That all Money paid as Surety, shall be reckoned as Principal Money from the Time of Payment, and Interest to be allowed accordingly. 2 Keb. 276.

It was held by the Court, That a Mortgagee of an Estate for Life on an old Mortgage, shall Account for no more than the Estate had been worth to be fold, without Respect had to the Benefit that happened by the Continuance of the Life. Ch. Cafes 107. Morley, &c. Yet upon Appeal to the Parliament ordered otherwise, and the Mortgagee Mortgagees directed to Account for the whole Profits of directed to the Estate for Life; as in the Case of other the whole Pro-Mortgages, if Lands in Fee and for Life are fits of Effate joined in a Mortgage, if the Fee be not ful for Life, ficient at the Time, the Life shall be valued only as it was at the Time, fix or feven Years Purchase, and not according to the Enjoyment fince, be it 20 Years or more. Ibid. Morley and Elway, ut Supra.

Account for

Prior Mortgagee upon Redemption by fecond Mortgagee.

The prior Mortgagee upon Redemption by the fecond Mortgagee, shall be charged with the Profits by whomsoever received after the fecond Mortgagee, but not before. 2 Rep. in Cb. Cases 209. Maddox's Case.

nufee shall Account according to the true Value, Orc.

At Common Law the Conusee must bring Where the Co- a Scire fac' ad computandum, but then the Conufee shall not Account according to the true Value, but according to the extended Value. But if the Conusee will sue in a Court of Equity, then he shall bring him to Account for what he hath received of the Profits above the extended Value. 2 Vent. 337.

Goff and Skipton.

In the Court of Requests. Goff borrowed Money of Skipton, and gave a Term for Years of which he was poffess'd for Security by Indenture, with a Proviso of Redemption, and shews further in his Bill, that there was a After a Mort- verbal Agreement between them, that if the Money was not repaid at the Day, the Testator should cut the Emblements growing if the Money upon the Land: And if the Emblements awere nor paid mounted to the Value of the Money, that at the Day, then he shall have his Term again, and that he did reap the Emblements accordingly, by which the Money was well fatisfied, and yet on the Land, he continues the Possession of the Term, and prays Ac- which afterwards came to Skipton, and is unexpired; and fo prays that the Defendant may Account for the Profits. The Defendant moved for a Prohibition in B. C. and by Richardson, although the Trust is contrary to the Indenture, yet such Averment is good notwithstanding the Proviso. But because Executors shall Account to none but the

gage execured, a verbal Agreement, theMortgagee should cut the Emblements count,

The Averment good, notwithstand ing the Pro-YHO.

the King; and the Years now spent, and although he occupy himself, yet the Profits are Assets; and if he should recover in a Court of Equity, it should be a Devastavit against the Executor, and by all the Court a Prohibition was granted. Lit. Rep. 211.

of Profits, &c. on Mortgages we may add the following Rules for that Purpose, chiefly collected out of Mr. Vernon's Reports, viz.

How, and in what Manner, a Mortgagee shall Account, and what Allowances be shall have.

1. A Mortgagee, on a Mortgage forfeited, shall Account only for what Profits he actually receives, and not for what he might have received, unless there be a Fraud, &c. Chan. Cases 258.

2. A Mortgagee shall not Account for more than he actually receives, unless where guilty of a wilful Default, &c. as where he has turned out, or refused a sufficient Tenant, &c.

Vernon 45.

3. Where a Mortgagee buys in an Incumbrance, he shall be allowed all that is due thereon, (contra of an Heir or Trustee.)

Ibid. 49.

4. A Mortgagee obtains Judgment in Ejectment, but refules to take out Execution, and permits the Mortgageor to take the Profits, having Notice of a subsequent Security, So. he shall be compelled to take the Possessinor to answer for the Profits, as in Case of a wilful Default. Vernen 258.

5. So a Mortgageor becomes Bankrupt, and the Mortgagee refuses to enter, but permits the Mortgageor to receive the Profits,

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and to fence with this Mortgage against an Ejectment brought by the Assignees, the Mortgagee was charged with the Profits from the Time of the Ejectment. Ibid. 267.

6. So a Mortgagee enters on the mortgaged Premisses, and thereby prevents subsequent Incumbrancers from entring, and yet permits the Mortgageor to receive the Profits. Such Mortgagee shall be charged with all the Profits he had, or might have received fince his Entry. Ibid. 270.

7. If a Mortgagee manages the Estate himfelf, he shall not be allowed for his Trouble; aliter, if he employs a Bailiss to do it. Ibid.

316.

8. Interest upon Interest, shall be allowed for so much as is reserved in the Mortgage Deed (assigned) because 'tis in the Nature of a Debt, and Damages are recoverable at Law for it. Ibid. 194. See Nelson's Reports, 258. ante Chap. 9.

9. Yet a Mortgage with a Proviso, That Interest if not paid at the Day, shall be Principal and bear Interest, the Proviso is void.

Salk 449.

to. A Mortgagee or Purchaser precedent, tho by defective Conveyance, shall be preferr'd before Assignees of Commissioners of Bankrupts. Ibid.

Bankrupt, and decreed, That the Mortgagees
Title should not be impeached by the Statutes.

See Nelfon 466.

12. Payment of Interest to a Scrivener on a Mortgage, &c. is good, if he has the Deed, but Payment of the Principal is not, because he has Authority only to receive the Interest. Salk. 157.

Bill

Bill by several Mortgagees against a pretended Heir in Tail to discover bis Title, and what other Estates and Incumbrances are prior to the Mortgagees, to soreclose the Equity of Redemption, and to consirm their Title to the mortgaged Premisses.

T Umbly complaining, flew unto your Lordship your Orators A. B. of &c. C. D. of, &c. E. F. of &c. That T. C. of the Parish of D. in the County of H. Gent. deceased, being in his Life-Time, (viz.) in or about the Month of March, 1658, seised in his Demesne as of Fee-simple, of and in all that capital Messuage or Tenements with the Appurtenances called the Home, &c. lying in the Parish of D. aforesaid, and of several Lands, &c. thereunto belonging, and being fo feised, and having Occasion for the Sum of 50001. did borrow the Sum of J. C. late of &c. Widow, and for the fecuring the Payment thereof with Interest, he the said T.C. by an Indenture bearing Date, &c. made between the faid T. C. of the one Part, and the faid I. C. of the other Part, for and in Confideration of the Sum of 500 l. &c. did grant, bargain and fell unto the faid I. C. all that capital Meffuage, &c., and all other the Lands, Tenements and Hereditaments of the faid T. C. lying in the Parish of D. aforefaid, whereof or wherein E. C. Widow deceased, late Grandmother of the said T. C. was feised, possessed or estated, at and before the Time of her Death, or which were by her had or enjoyed, together with the faid capital Messuage. To have and to hold, &c. the Term of 500 Years, then next enfuing

fuing, &c. yielding and paying one Pepper-Corn, &c. under a Proviso or Condition nevertheless in the faid Indenture contained, that if the faid T. C. his Heirs, Executors, Administrators or Assigns, or any of them, did or should pay or cause to be paid unto the faid I. C. her Executors, Administrators or Assigns, at her then Dwelling-House, at, &c. on the 29th of Sept. next enfuing the Date of the faid Indenture, &c. That then and from thenceforth the Estate and Term thereby granted or mentioned to be granted should cease, determine and be utterly void, as in and by the faid Indenture (whereunto your Orators refer themselves) more at large appeareth. And your Orators further shew. That the faid Mortgage Money was not paid at the Days and Times in the faid Proviso mentioned, whereby the Estate in Law became absolutely vested in the said I. C. her Executors, Administrators and Assigns, for the Remainder of the faid Term of 500 Years: and the Interest of the faid I.C. after her Death, in, and to the faid mortgaged Premisses, did by Vertue of her Will, and by Vertue of an Assignment from E. M. the Executor of A. M. who was Executrix of T. M. who was Executor of the faid I. C. came to and vested in one H. C. of, &c. he the said H. C. by Indenture bearing Date, &c. made between H. C. of the one Part, and J. B. of, &c. of the other Part, for and in Confideration of the Sum of 565 l. of, &c. to him in Hand paid by the faid J. B. he the faid H. C. did grant, bargain, fell and affign, and fet over unto the faid J. B. his, &c. all and fingular the faid capital Messuage, &c. and all the Premisses in the first recited Indenture

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mentioned, &c. Habend', &c. unto the faid I. B. &c. for and during all the Residue of the faid Term therein, then to come and unexpired, in as large, ample and beneficial Manner, as he the faid H. C. and J. C. and A. M or any, or either of them might. would or should enjoy the same to all Intents and Purposes, as in and by, &c. and afterwards by Indenture bearing Date, &c. made between the faid I. B. of the one Part, and W. W. of. &c. of the other Part, he the faid I. B. for and in Consideration of the Sum of 340 l. of. &c. did grant, bargain, fell, affign, and fet over unto the faid W. W. of, &c. all the beforemention'd Premisses granted to the said I.C. in or by the aforesaid Indenture, and every Part. &c. To have and to hold the faid capital Meffuage, &c unto the faid W. W. her, &c. for and during all the Rest and Residue of the said Term of 500 Years then to. come and unexpired, with a Proviso, &c. (and so mention the Proviso for 340 l. and Interest at certain Days and Times in the faid Indenture mentioned, &c. as in and by, &c.) And your Orators further shew, That by the Indenture bearing Date and duly executed in or about, &c. made between the faid W. W. of the one Part, and your Orators C. D. and E. F. of the other Part, he the faid W. for and in Consideration of the Sum of 378 L 16s. of, &c. to him in Hand paid by your faid Orators C. D. and E. F. did grant, bargain, fell, &c. unto your faid Orators C. D. and E. F. all that the faid capital Meffuage aforefaid. &c. and Premises expressed and contained in the faid feveral recited Indentures. or any of them, with their and every of their Appurtenances, and all the Estate, &c. To have.

have. &c. from the Day next before the Date of the faid Indenture, &c. as in and by, &c. And your Orators further shew, That the faid 378 l. 10 s. fo paid unto the faid W.W. was the proper Money of your Orator A. B. and that their Names were only made use of in the said Assignment in Trust for him. and they have by a Deed or Declaration of Trust, bearing Date the same 13th Day of March, &c. declared the same so to be. And your Orators further shew, That the said T. C. having Occasion several Times for Money, your Orator did lend to, and supply him with 11201. of, &c. and for fecuring the Repayment thereof with Interest, by Indenture bearing Date, and duly executed on or about the, &c. made between the faid T. C. of the one Part, and A. B. of the other Part, he the faid T. C. for and in Confideration of the faid Sum 11201. of &c. to him in Hand paid by your Orator A. B. did demise, grant, &c, bargain and fell unto your Orator A. B. his, &c. all the faid capital Mesfuage, &c. and also all other Messuages, &c. in the Premisses of D. and W. or elsewhere in the faid County of H. and the Reversion and Reversions, &c. and all and every the Deed, &c. To have and to hold, &c. unto your Orator A. B. his Executors, Administrators and Assigns, from the Sealing and Delivery of the faid Indenture, for and during, and unto the full End and Term of 100 Years from thence next ensuing, and fully to be compleat and ended, without Impeachment of or for any Manner of Waste (under a Pepper-Corn) Under a Proviso or Condition nevertheless, that if the said T. C. his Heirs, Executors, Administrators or Assigns, &c., should pay

pay 1136 l. 16 s. on, &c. next ensuing, then to be void, as in and by, &c. And your Orators further shew, That the said T.C. before he paid the 1136 l. 16 s. or any Part thereof, or the faid 378 l. 16 s. due on the faid C's Mortgage, or any Part thereof, or any Interest for the same (that is to say) on or about the Month of, &c. Anno, &c. died, D. C. of D. prad' Gent. his Son and Heir, to whom the Inheritance and Equity of Redemption of the faid mortgaged Premisses is descended, and come, and he ought to pay unto yout Orator A. B. the faid feveral Soms of 3781, 16s. and 11361, 16s, with Intereft, and his Cofts and Charges which he hath been at, in Relation to the Mortgages and mortgaged Premisses, which your Orator in a friendly Manner hath requested him to do. But now fo it is, May it please your Lordship, That the said T. C. in Combination and Confederacy with fome Persons unknown to your Orators (whose Names, &c.) he doth endeavour as much in him lies to defeat and defraud your Orator A. B. of the faid 1136 l. 16 s. and Interest due on the said last mentioned Mortgage, and in Order thereunto doth give out in Speeches, that the faid T. C. his Father on Marriage, neither E. C. his Mother, who was the Daughter of the faid J. B. did, in or about the Month of, &c. Anno, &c. enter into, and become bound unto the said I. B. in a certain Bond or Writing, Obligatory of a great Penalty conditioned, that he the faid T.C. in a short Time in the Condition of the faid Bond prefixed, fettled in Joynture upon the faid E. C. and the Heirs of their two Bodies, the Manor of Home, and all other the Lands which 2

which were formerly the loynture of E. C. his Grandmother, &c. upon himself for Life, and after his Death to the Heirs of his Body. on the Body of the faid E. and for want of fuch Iffue to his own right Heirs, or to some such Effect. And the said T. C. doth pretend, that by Vertue of the faid Bond he is intitled to the faid Premisses as Heir in Tail; and that your Orator A. B.'s Mortgage being subsequent to the faid Bond cannot affect the Estate, although the faid T. C. well knows, and fo the Truth is, that the faid I.B. never perform'd the Marriage Agreement on his Part; and that the faid T. C. the Father never made any Settlement pursuant to the said Bond, but after the Time of his entring into the faid pretended Bond; but after the Time of the faid Marriage, the faid F. C. the Father, by Articles under Hand and Seal, bearing Date on or about, &c. contracted to fell all the faid Premisses called the Home, &c. unto one Ho W. and his Heirs, and the faid T.C. levied a Fine of the faid Premisses unto the faid H. W. and his Heirs. but made no Conveyance to lead the Use thereof, which faid Fine fo levied, as your Orator A. B. is advis'd. doth deftroy the Estate Tail, which according to the Condition was to be fettled in Cafe any Settlement had been made, and doth enure to the Use of the said T. C. the Father, and his Heirs, and gave him good Power to make the faid Morrgage to your Orator A. B. and at other Times the faid T C, the Son doth pretend, that the faid mortgaged Premiffes' are not worth the Money due to your Orator A. B. thereon, (the faid E. C. the Mother having an Estate for Life in the said Premiffes

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Premisses called the Home, &c.) which your Orators cannot controvert, nor do by this Bill feek any Relief against the same, but are willing and contented that the should enjoy the fame during her Life: And that if your Orator A. B. enters into the faid Premisses called F. that your Orator shall be no better than his Bailiff, and that he will call your faid Orator to an Account for the fame when he pleaseth, and also pretends that the fame Premisses are charged with, and liable to former and other Estates, Grants, Mortgages, Judgments, Leafes, and other Incumbrances made in Time before the faid Mortgages, under which your Orators claim as aforesaid, but to whom, when and for what, or by whom entred into, the faid T. C. the Son, refuseth to discover. And your Orator A. B. having Occasion for his Money. cannot dispose of the Premisses to any Purchasor, and thereby raise and repay himself his faid Mortgage Money and Interest, unless he had the Premisses in quiet Possession. freed and discharged of the Equity of Redemption of the faid T. C. the Son, and he release his Interest and Equity of Redemption, of and in the faid Premisses to your Orator, as he ought to do in Case he refuseth to pay what is due to your Orator A. B. by a fhort Day to be limited by this Honourable Court. In tender Confideration whereof, and forafmuch as your Orators are remediless in the Premisses, &c. To the End therefore, that the faid F. C. the Son, may fet forth and difcover whether he doth not believe, or hath heard, that the faid T. C. his Father, did make such Mortgage to the faid J. C. as here-

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herein before is fet forth, and for what Confideration, and whether he had good Right, Power and Authority to make the faid Mortgages, and whether the faid Mortgages are forfeit, and whether the faid T. C. the Father, did not enter into any Bond to I. B. to make a Toynture of the faid Premisses to his Wife, and the true Date and Contents of the Bond, and whether any Settlement was ever made and executed by him pursuant to such a Bond, and when, and the Date and Contents of the same, and who are Witnesses thereto. and where they live, and whether the fame was fealed and executed on the Day it bears Date, and whether the faid T. C the Father. did make fuch a Contract, and levy fuch a Fine to H. W. as aforesaid, and may also set forth what Deeds, Evidences or Writings, he or any for him hath, or had, or can come by concerning the Title of the faid Premisses. and in whose Hand they now are or lately were, and what Mortgages, Estates, Statutes, Judgments or any other Incumbrances, and of what Nature or Kind the faid Premisses. or any, or what Part thereof are liable unto. or charged or chargeable with, and to whom, and by whom, and when, and upon what Consideration, really and bona fide entered into, and Covenants really due thereon. and what is the true yearly Value of the faid Premisses, and that the said T.C. may true Answer make to all and fingular the faid Premisses, and may be compelled by the Decree of, &c. to pay unto your Orator A.B. the faid principal Mortgage Money due on the faid Mortgages, and Interest for the same, and his Costs and Charges, by a Time to be for that Purpose, prefixed by this Honourable

Honourable Court, or in Default of Payment thereof, at fuch a Time and Place as this Court shall direct, that your Orators, their Executors, Administrators and Assigns, may hold and enjoy the faid mortgaged Premisses. against the said T. C. during the Remainder of the faid several Terms, free and clear from all Right and Equity of Redemption. of the faid T.C. or any claiming by from or under him, and that the faid T. C. may deliver to your Orator all the Deeds and Writings, which any ways concern the faid Premisses or any Part thereof, and release the faid Provisoes or Conditions in the faid Mortgage to your Orators respectively, and make further Affurance, and that your Orator may be relieved, &c. Leville Entitle : Wil

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CHAP. XII.

Devises of Mortgaged Lands, and of Mortgage-Money. What paffeth in a Will by thefe Words. all my Mortgages. Where Lands are decreed to the Devisee of the Mortgagee, to be fold for Payment of Debts. Where a Devise is absolute, and concludes the Heir of Equity. Pleadings. A Thing mortgaged, shall not be intended to be redeemed without shewing it expressly. A Special Plea in Bar answered with a Special Replication. Indenture of Mortgage, no Estopple to Jay the Defendant bad no Estate in Covenant, but in Debt for Rent it is Evidence. The Court will set afide an Evidence that may let himself into a certain Interest, though but in Equity. What shall be good Evidence of Payment of Mortgage-Money. Trial of the Validity of a Mortgage.

A Man seised of Black Acre in Fee, and seised also in Fee of other Lands upon a Mortgage made to him by I. S. which is not forseit, and deviseth Black Acre in Fee to his Brother, and all the Residue of his Goods, Leases, Mortgages, Estates, Debts, Sc. he gives to his Wife, the Wife shall have an Estate for Life in the Lands mortgaged, but not a Fee, for it is coupled with Chattels. 1 Rolls. Abr. 831, 834. Wilkinson's Case, Cr. Car. 447, 449. The same Case. Had he devised his Estate in such Land, the Fee had passed, or had he mentioned, that he had such Land mortgaged in Fee.

One mortgages Lands in Fee to I. S. and his Heirs, upon Condition, if he or his Heirs pay to I. S. and his Heirs 160 l. upon such a

Day

Day that he might re-enter; before the Day the Mortgagee gave to R. K. all his Goods, Moneys, Bills or Bonds, Mortgages or Specialities for Moneys, and made him Executor and dy'd; R. K. entred, the Money not being paid. Per Cur. These Words (all my Mortgages) made a good Devise of the Lands mortgaged. Cr. Car. 37 Crips and Gryfil's Cafe.

In How and Vigures's Cafe, It was decreed, that the Heirs of the Mortgageor shall repay the Money with Damages, and in Default the Premisses are decreed to the Devisee of the Mortgagee, to be fold for the Satisfaction of his Debt. 1 Ch. Rep. 32. A just Decree.

A Man upon Marriage, covenants to pay his Wife 1000 l. within two Years after his Decease, and gave a Statute for Performance, but before this he had mortgaged his Land for 500 l. for Years; he afterwards devised these Lands to his Wife and her Heirs, if the 1000 l. were not paid to her according to the Marriage Covenant, she paying off the 500 l. he dy'd, and made his Wife Executrix, to whose Hands Assets came; the 1000 l. was not paid to the Wife, she paid off the 500 L and had the Mortgage affigned, the then conveyed the Lands in Fee by Fine; the Heir of the Covenantor would redeem paying the 1000 l. and the 500 l. with Interest upon the Discount of the Profits. Per Where a Des Cur. The Devise to the Wife is absolute, if the vise is abso-1000 L. were not paid, which deprives the lute and con-Heir of the Covenantor of any Right of Re-Heir of Equidemption. Hard. 551. Sir M. Woolston and cy.

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Alton's Case.

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Note, There are several Cases in the Chan- Morrgages, cery Reports, which prove, That not only for Payment Mortgages but even Equities of Redemption of Debts.

This is total

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may be affigned or devised for the Payment of Debts, &c. And so is the Case of Girling versus Lee, in Vernon 63. And also that of Brent and Best, ibid. 69. And in the Case of Turner and Gwinn, ibid. 44. 'twas said, That Tenant in Tail of an Equity of Redemption may devile it for the Payment of Debts.

Mortgagee remits by his last Will Part of the Mortgage Money, and all the Interest, if the rest be paid within three Years; the Mortgageor failing to pay within three Years, loseth the Benefit of the Bequest. Cb. Cases

p. 52. Sir Thomas Littleton's Cafe.

Pleadings.

The Condition of a Bond was, E. T. had bargained and fold fuch a Close of Pasture. called, &c. and whereas the faid E.T. hath by Indenture of Mortgage mortgaged to I. S. divers Lands in G. whereby the Close of Pasture is either mortgaged or supposed to be mortgaged upon Condition for Payment of a certain Sum at a Day yet to come, if therefore the faid Close of Pasture at the Day mention'd in the faid Indenture of Mortgage be redeemed, fet free, and discharged from all Titles, &c. which may grow by Reason of the said Mortgage, that then, &c. The Defendant pleads in Bar, That the Close mentioned in the Condition was not mortgaged to I.S. Effic dicit quod Clausum præd', &c. fuit redempt' liberat' & exonerat', &c. The Plaintiff replies, That the Close, &c. was mortgaged to the faid J. S. and upon this Isue joined, and found for the Plaintiff. It was moved in Arrest of Judgment, that the Replication was not good, for the Plaintiff ought to have replied,

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replied, it was mortgaged to the faid I. S. and is not redeemed; for though it were mortgaged, yet the Condition by the Mortgage only is not broken, for it may be that notwithstanding the Mortgage, that before the Day set it was redeemed. But per Cur. In this Case the Defendant by his Plea offers an Issue, (viz.) That the Close was not mortgaged, which is a particular Point to which the Plaintiff ought to answer; and so he does when he replies, (viz) That the Close was A Thing mortgaged, and then the Parties are at a cer- mortgaged tain Issue, and so need not alledge that it was not redeemed, for there shall never be in- be redeem'd tended any Redemption, because the De-wirhoutshewfendant pleads it was not mortgaged; as if ing it expres-I. S. be bound to marry the Daughter of I. D. 1y. before Easter-Daynext in Debt upon this Bond. if I.S. pleads that the Daughter of I. D. died before Easter-Day, this is a good Plea; and alfo it is a good Replication to fay, That the Daughter was alive on Easter-Day, without A special Plea faying that he had not marry'd her, because in Bar ana special Plea in Bar is always answered with special Replia special Replication in the Point which is cation. alledg'd. Telv. 24. Baily and Taylor. Vide this Case of Cro. Eliz. p. 899.

In Covenant on a Mortgage by the Defendant to the Plaintiff, to pay fo much Money feven Years hence, and fo much yearly out of the Land in Lease to I.S. The Breach was assign'd, that the Defendant had no Eftate to convey. The Plaintiff on Oyer of the Morigage, no Indenture pleaded, that I.S. was Tenant pur Estopple to Vie, and that the Defendant was seised in Fee of the Reversion sufficient to convey. no Estate in The Plaintiff demurrs: Per Cur. The Inden- Covenant, but ture of Mortgage is no Estopple to fay the in Debt for 0 3

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Defendant had not Estate in Covenant; but in Debt for Rent, Gc, it is. 3 Reb. 712. Cordinglee and England's Cafe.

Evidence.

In Ejectment on Extent, on Mortgage in a Trial at Bar. The Defendant excepted to a Witness, because his Father my Lord G. paid a Debt, as Security with the Defendant's Court will fet elder Brother for the Defendant's Father; but there being no Counterbond, and therefore doubtful in Fquity, whether he as Heir could recover any thing against the Defendant as Heir, the Court swore him; but if he were to let himself into a certain Interest, though but in Equity, the Court would fet him aside. 2 Keb. 345. Vincent and Tirringbam's Cale.

What shall be It was a Question in Goddard and Complin's Case. Whether the Defendant had proved Payment of the Money supposed to be lent, and as to that there was the Receipt in the Deed of Mortgage, the Condition of Redemption on Repayment of the Money; and the Defendant's Oath, that he had paid it, which was Evidence enough after ten Years against any Person, and so the Court enclined.

> In Evidence to a Jury the Issue directed out of Chancery was, Whether Money was paid for the Mortgage of White Acre, if it were paid for White Acre and Black Acre: It's well enough, and as if it were upon whether a Common from Lady-Day to Michaelmas, and the Jury found from Christmas to Michaelmas, and good. 1 Keb. 192. Levet and Crane's Cafe.

afide an Evidence that may ler himfelf into a certain Intereff, though but in Equity.

a good Evidence of Payment of Mortgage Money.

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The Mortgagee purchaseth the Land mortgaged: The Plaintiff who had Title of Redemption, would before he Redemise have the Validity of the Mortgage try'd at Law. But the Court ordered, that the Plaintiff A Trial of should declare, whether he will redeem or the Validity not, before the Validity of the Mortgage of a Mortshall be tried, it being against the Rule of gage. Justice, for the Plaintiff to have the Equity of Redemption from the Defendant, after he had endeavoured to avoid his Title. 1 Cb. Rep. 169. Smith and Valence's Case,

the Court would not relieve Things the Militing

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CHAP. XIII.

Equity of Redemption. General Rules thereof. Who shall be made Parties to a Bill for Redemption. Who shall or may redeem. And hall be compelled to redeem, in two or three Rules Where a Devise deprives the Heirs To late T A Tible Wall of the Covenantor of the Equity of Redemparold a ha tion. Executor decreed to bold the Land till Money laid out upon Redemption was raised. Whether Mortgagee shall have Equity of Redemption against the King. Where Mortgagee's Oath upon Account shall bind. Within what Time a Mortgage is to be redeemed. Where the Court would not relieve, though the Mortgagee confest be was satisfied. Plea and Demurrer to a Bill of Redemption. Presumption by Circumstances that nothing is due upon a Sleeping Mortgage. Mortgages not to be relieved except in some Cases. The Nature of a Power of Redemption. Voluntary Deed good to pass the Equity of Redemption. Where Issue in Tail shall be bound in Equity of Redemption. What will extinguish Equity of Redemption at Law. Equity of Redemption assignable and devisable. One decreed to pay the Mortgage-Money, and also Money fince borrowed on Bond. Mortgageor if be redeem, to pay all Cofts.

> Shall begin this Chapter touching Fquities of Redemption, with some general Rules thereof, viz.

> 1. That Redemptions are favoured and Restrictions of Redemptions are discountenanc'd 10

in Equity. — See Vernon's Reports 438, 191. Vide infra.

2. A Mortgageor may be admitted to redeem before the Day of Payment. Ibid. 183,

3. One who claims under a voluntary Con-

veyance may redeem. Ibid. 193.

4. Where the Mortgagee is in Possession, Length of Time is no Objection against a Redemption. Ibid. 418.

5. A Fine levy'd by Mortgagee, and five Years Nonclaim will not bar a Kedemption,

&c. Ibid. 132.

6. A Redemption decreed (to Creditors) after 20 Years Possession and great Improvements. Ibid. 138.

7. A Judgment Creditor discharging Mortgages precedent shall redeem. Nelson 367.

8. If Part of a Mortgage be without a Joynture, the Joyntress may redeem the whole. Vernon 190.

9. A Mortgage made redeemable during the Mortgageor's Life, yet his Heir may redeem. Ibid. 97. Sed 141, 182, &c. contra.

his Heirs Male may redeem, yet the Ailignee of the Equity may. Ibid. 33.

11. And so may the Mortgageor's Wife or

other Jointress, &c. Ibid. 190.

A Mortgaget

12. A Redemption of a Mortgage may be after a Release of the Equity. Vide Nelson 284, &c.

Yet in certain Cases Redemptions seem to be restrained, viz.

in Equity - See Forming Reports 428, 191.

1. He who comes to redeem must shew his Title to the Equity of Redemption. Vernon 182.

2. Where there is a Debt on Bond as well as Mortgage, the Mortgagee shall not redeem

without paying both. Ibid. 244.

3. Nor shall the Heir of the Mortgageor sedeem in the Case without discharging both Debts. Ibid. 245.

4. So if there are two Mortgages, one worth redeeming, the other not, one shall not be

redeem'd without the other.

5. And so if one of the Mortgages is defective, and the other not, they must go to-

gether. Ibid. 8, 29, 245.

6. If one gets an Assignment of a Mortgage for less than is due thereon. Yet the Mortgageor or his Heir, &c. shall not redeem but on paying the whole that is due. Iibid 336.

7. The Husband and Wife mortgage the Wife's Lands; he pays off Part of the Principal, but after borrows the same Sum upon the same Mortgage. The Heir of the Wife shall not redeem without paying off both Sums. Ibid. 41. Reason versus Sacheverel.

But further, to shew how much Redemp-

tions are favour'd in Equity, observe,

The Equity of Redemption was foreclosed by Decree: The Mortgagee agrees with other Creditors (who were Parties to the Suit) to convey to them on Payment of his Money in 12 Months; yet a Redemption was decreed to the Creditors after 20 Years Possession and great Improvement. Hill 1682. Extonversus Greaves. — Vernon 138.

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A Mortgage made in 1673, wherein was a special Clause of Redemption, viz. That if the Mortgageor or the Heirs Male of his Body, should in June, 1686, pay off the Principal and Interest, then he or his said Heirs Male might re-enter. Yet the Mortgageor's Wife who had a Joynture of Part, was admitted to redeem. Ibid. 190. Vide 192.

The Mother Tenant for Life Remainder in Fee to her Son, they convey Land to B. in Fee, who is put into Possession, but under this Agreement, viz. If the Money be repaid in 10 Years, B. shall reconvey; the Son without the Mother brings a Bill to redeem, the Prosits had much exceeded the Interest. And 'twas decreed, That B. should account for the Prosits, and not set the Prosits against the Interest. Mich. 1687. Fultborp versus Foster, Vernon 476, 477.

Who must be made Parties or not. Vide Post.

The Heir of the Mortgagee exhibited a Bill to have the Mortgageor pay the Money, or be decreed to make further Assurance, and be foreclosed of Redemption: It was demurred to, because the Executor of the Mortgagee who might have Title to the Mortgagee Money was made no Party, and the Demurrer was allowed. Chanc. Cases 51. Freake and Hersey.

Who shall or may Redeem, and who shall be compelled to Redeem.

It is holden for a Rule, That none can come Regula. to Redeem a Mortgage, when the Mortgagee cannot compel the Payment of the Mortgage-Money,

Money, for the Remedy ought to be reciprocal. Vide Vernon 192, 215.

Creditors.

Creditors on Judgments and Bonds, shall be decreed to Redeem Mortgages on Satiffaction of their Debts. I Rep. Chanc. Cafes 396.

Executor.

If the Executor hath Affets, he is compellable to Redeem a Mortgage for the Benefit of the Heir.

Articles were made before Marriage, that the Husband's Lands should be settled upon himself and his Wife, and the Heirs of his Body by the Plaintiff. The Husband dies before the Articles were executed, and Settlement made: she exhibits her Bill to have the Articles executed, which was decreed. But the Land was mortgaged to one who had no Notice of the Articles. It was decreed, That the Plaintiff should redeem and hold for her Life, and that her Executors should detain the Lands till the Money was raifed that she had laid out upon the Redemption. 2 Vent. 422. Haymer contr' Haymer.

Money laid out upon Redemption be

Whether Mortgagee shall have Equity of Redemption against the King.

Executors decreed to hold

the Land till

raifed.

A Mortgage in Fee is forfeited, Mortgagee dies, his Heir is attainted of High Treason by Act of Parliament, the King seiseth; whether the Mortgageor hath Equity of Redemption against the King. Hards. 465. Section of the second point year

24 Odob. 1674. 26 Car. 2. Lord Keeper Finch. Sherman Plaintiff, Cox Defendant. had dead as seen that

Robins mortgaged his Estate, Aug. 5. 1650. to Smith for 99 Years.

Novemb. 5. to Partridge for 10 Years.

1654 and 55, to Sherman the Plaintiff's Hufband, for 1500 l. Afterwards to on Brown-Money.

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ing, and then Browning buys in the two first

Mortgages.

1664, Sherman the Plaintiff Administers dur minor' etat', and exhibits a Bill against Robins and Browning, and fets forth their Title. to discover the Defendant's Title and Redeem. and Defendants Answer, but no further Proceeding.

Whereby he had Notice of the Plaintiff's

1666. Browning exhibits a Bill against Robins alone, to redeem or be precluded.

All this Time Robins in Possession.

1667. After Preclusion, Defendant Cox

bought Browning's Interest.

1569. The Plaintiff brings a Bill to redeem, and the Defendant pleads his Purchase and the Equity of Redemption barred.

Qu. Whether Browning should have made Who to be the now Plaintiff Party to his Bill to preclude, and whether the Plaintiff ought not to be let in to redeem.

Lord Keeper, &c. declared the Cafe was to be judged by comparing them on both Sides,

and fo to chuse the least Mischief.

1. He said it was extream mischievous for the Mortgagee to make all Parties that had Interest, for so every Mortgagee in Case of often Mortgages was continually a Bailiff, and his Work never at an End, for it might come to one, two, and three, &c. Mortgages.

2. He said he would be helped at last by

having Principal, Interest and Charges.

But in the other Case, if the Plaintiff should not be relieved, it would be irreparable Loss and Ruin, therefore thought Trouble and Pain, less than Ruin aud Total Loss;

made Parties to the Bill to preclude Redemption.

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Collusion.

but declared, the Account stated and Decree should bind, unless should prove great Collusion; and declared, he would consider of a Way to make Men take Care to redeem Mortgages, either by putting forth Rules,

1. That Interest upon Interest should be

allowed.

2. By taking away the Rule that Mortgagees should answer for what they should receive without their wilful Default, and by ordering that the Mortgagee's Account upon Oath should bind, unless disproved by Witnesses.

Roscarrick and Benton's Case, Ch. Cases 217.

Within what Time a Mortgage is to be redeem'd.

Now if a Man will redeem, he must come in Time. Mr. Totbill, so. 232. tells us, a Bill was demurred to in 15 Car. 1. because it was to be relieved after 41 Years, but because there was a Promise that it should be redeemed after Twenty seven Years, it was relieved.

In Isham and Cole's Case, the Court would not relieve a Mortgage of Thirty three Years Elapse of Time, though the Mortgagee confess dhe was satisfied, as was proved by the Mouth of one Witness. 1 Rep. in Ch. Cases 128. And after that in Clapham's Case, a Mortgage was not redeemed after Twenty Years Forfeiture; and the Estate descending to an Heir, and he sell it, he pleads this, and the Plea held good.

In Sanders and Hord's Case, 12 Car. 2. the Plaintiff sought a Redemption of a Mortgage, as Heir and Administrator of the Mortgageor;

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Where the Court would not relieve a Mortgage tho the Mortgage confess'd he was fatisfied.

the Defendant demurs, for that he ought not to be troubled for any Matters in this Bill. in Regard of the Antiquity of the Transactions, which were in 38 Eliz. and pleaded. That the Plaintiff had not made an Entry in twenty Years, and is barred by the Statute of 21 Jac. the Plaintiff claiming as Heir to his Father; and the Court allowed both the Plea and Demurrer. 1 Rep. Cha. Plea and De-Gafes 184 10 M as Hardw at smil It a saw

In the Case of Hales versus Hales, the Suit was to be relieved against an ancient Mortgage which had flept fixty Years, and it appearing that the Defendant's Father dy'd forty Years fince, and in all that Time there was no Interest paid, or any Demand at all upon the faid Mortgage: The Court decreed. That the Plaintiff being a Purchaser from Sir Edw. More, who was the Mortgageor, and he and those under whom he claims had enjoyed it for fixty Years last past should hold the Premisses, and that a Vacat been- Mortgage tred upon the Incolment of the faid Mort- vacat. gages souls

And much like this was the Case of Sybson and Fletcher. The Defendant had a Mortgage of the Lands of one Brifcoe, 14 Fac. which Lands the Plaintiff fince purchased, which Mortgage Money was payable three Years after, and the faid Brifcoe hath had Possession of the faid Lands ever fince the making the faid Deed of Mortgage till 21 Fac. at which Time he fold to the Plaintiff, who was never interrupted 'till of late. Now for that the Presumption Defendant did not upon the Plaintiff's Purchafe, though he faw the Possession altered nothing is from Brifcoe to the Plaintiff, make any Claim due upon a to the Land, nor give any Notice of his fleeping Morr Mortgage, gage. prings

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Mortgage, and the Defendant hath fince purchased Land of Briscoe, and paid him Money, in all Prefumption this Mortgage Money is fatisfy'd, and the Court decreed the Deed of Mortgage to be deliver'd up to

be cancelled. 1 Rep. Chan. 59.

Now it was the Opinion of the Lord Keeper and the Mafter of the Rolls in Pearlon and Pulley's Cafe, 20 Car. 2. That Twenty Years was a fit Time in which a Mortgage is redeemable, in Imitation of the Statute of Limitations of real Actions; and they directed that when a Bill came to redeem an old Mortgage the Defendant should plead or demurr to it, that for the Judgment of the Court might be had upon it? The lot asw

So in 2 Ventris 240. White and Ewer. The Lord Keeper declared he would not relieve Mortgages after twenty Years, except in Cases of Infants, Feme-Coverts, &c. though these Matters in Equity are to be govern'd by the Course of the Court. But true it is, that in some Cases, and as Circumstances are, Mortgages have been relieved after thirty Years, as where the Parties cannot get into Possession by Reason of an Estate for Life. as was the Opinion of the Lord Keeper in Rofcarrick and Barton's Cafe, Cb. Cafes 220.

And here was the Case of Cornall and Sikes. A. C. the Plaintiff's Mother, whose Heir he is, being feized in Fee of Copyhold in Thirty five, the and her Hufband mortgaged the Lands to Dr. M for 30 h and for Nonpayment thereof the Premises were forfeited. and Dr. M. disposed of the Premisses to Foun his Wife for Life, the Reversion to the Defendant A. and dies, and the not being able to redeem, the Plaintiff, her Son and Heir, Mortgage, brings

Plead, or Demurrer.

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brings his Bill to redeem. Defendant infifted. that the Plaintiff ought not to redeem, being fo long fince, and that the Defendant M. hadconveyed the Premisses to the Defendant H. The Court in Respect of the Impediment in the Plaintiff's Mother to redeem during the Coverture, decreed the Plaintiff to redeem-1 Rep. Ch. Cafes 194.

And in the Case of Barrell against Sabine. Mich. 1684, in Vernon 268. The then Lord Keeper faid, That where ever there is a Clause or Provision in a Conveyance to repurchase within such a Time, the Time limited

ought to be precifely observed.

Several useful Cases about Equity of Redemption.

Note, Power of Redemption is an Equi- The Nature table Right inherent in the Lands, and binds of a Power all Parties in the Post or otherwise: But a of Redemp-Trust is created by the Contract of the Party, and he may direct it as he pleafeth; and therefore one that comes in in the Post, shall not be liable to it without express Direction of the Party; and they are only bound by it who come in in Privity of the Estate.

Hard. 469.

A Man makes a voluntary Deed, and then a Mortgage of the same Lands: The first Deed at a Trial of Law is found fraudu- Deed fraudulent; he to whom the Deed was made exhi- lent. bits a Bill to redeem the Mortgage. It was held that the first Deed was fraudulent, because voluntary, quoad the Mortgage Money and pro tanto, yet that it was good as to the Equity of Redemption, and would pass that. Cb. Cafes 59. Rand and Cartwright.

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Voluntary Deed to pass the Equity of Redemption.

Where Issue in Tail shall be bound in Equity of Redemption:

What will extinguish Equity of Redemption at Law.

Equity of Redemption affignable and devisable.

Perion deorted to pay the Mortgage Money, and also Money since borrowed on Bond, But voluntary Dispositions of Equity of Redemption are not to be favoured, as in Case where the Plaintiff claims an Equity by way of Intail, which would make an Equity of Redemption perpetual.

A Decree to foreclose a Tenant in Tail shall bind his Issue in an Equity of Redemption, because that is a Right set up in a Court of Equity, and so may be here extinguished.

Cb. Cafes 122.

An Equity of Redemption is transferrable from one to another now, and yet at Common Law if he that had the Equity made a Feoffment, or levied a Fine, he had extinguished his Equity at Law. Idem 121.

An Equity of Redemption is now of fo great Esteem in Law, that it is assignable and devisable, and an Occupant or a Tenant in Dower shall be liable to it. Hard. 468.

Sir G. C. mortgaged Lands, 28 Car. 2. to Jennings for 2000 l. and died, and the Plaintiff being his Heir, prays a Redemption. The Defendant infifts, that the faid Sir G. C. before the Mortgage borrowed of the Defendant 300 l. on Bond (viz.) in 1672; and that it was agreed also to be secured by the said Mortgage, but the Plaintiff is not willing to pay that, only will redeem the Mortgage. The Court decreed the Plaintiff to pay the Defendant both the 200 l. and the 300 l. and then the Plaintiff shall redeem. 2 Rep. Chan. 247. Whindan and Jennings.

It is agreed to be Practice of the Court of Chancery, That if the Mortgagee lends more Money upon the Mortgageor's Bond, he shall not redeem without he pay off the Bond

too.

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A. mortgageth to B. Black-Acre, which happens scarcely to be worth the Money lent upon it; and A. also mortgageth to B White-Acre, which is much better than the Mortgage Money. If he exhibits his Bill to redeem, he shall redeem both or none. Aliter in Case of two Bonds.

Where the Mortgagee exhibits his Bill to Mortgageof compel the Mortgageor to redeem or foreclose must pay all him, if the Mortgageor redeem he must pay Costs, all Cofts, but if he redeem not, the Mortgagee shall recover none.

Mortgage in Case of Infants.

Saile, Freezland, and others, Infants.

A Bill to redeem a Mortgage made by the Father of the Defendants, or to foreclofe. Defendants by Guardians answered, That their Grandfather was seised in Fee, and made a Settlement whereby he intailed the Estate, but with a Power of Revocation by any Writing published under his Hand and Seal in the Presence of Three Witnesses. The Case was, he made his Will under his Hand and Seal, wherein he recited this Power, and declared he revoked the Settlement; but the Will had but two Witneffes, which subscribed their Names, though a third was present, and dy'd; the Lands descended to the Father. who made the Mortgage, and the Defendants claimed by Vertue of the Intail: The Decree was, That the Mortgage Money should be paid off.

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1. There was an Execution of the Power in Strictness, though the third Witness did not subscribe.

2. If there had not, yet Equity should help it in such little Circumstances, where the Owner of the Estate had declared his Intention.

There is a Difference where a Man hath Power to make Leases, Sc. which shall charge and incumber a third Person's Estate; such Powers are to have a rigid Construction; but where the Power is to dispose of ones own Estate, it ought to have all the Favour imaginable.

And the Court in this Cale would not decree the Infants to be foreclosed till they came of full Age (though sometime it is so done) because this Mortgage depended upon a disputable Title, and no Money could be expected by the Assignment of it over. 2 Ventr. 350.

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CHAP. XIV.

Equity of Redemption. Where Money received for the Equity of Redemption is no Affets in the Hands of the Heir, and why. In what Cases the Mortgage is irredeemable. Where no Relief against the Penalty of a Statute by Issue in Tail. Of Money lent upon the Credit of a former Security. Stat. 4 and 5 William and Mary. In what Cafes the Mortgageor shall have no Equity of Redemption by that Statute. Who and in what Proportion shall contribute to an Equity of Redemption. Devise of mortgaged Lands to B. for Life, Remainder to C. Tenant for Life, to pay one Third, be in Remainder to pay three Thirds. A Fointress decreed to pay the Mortgage Money, and she and her Executors to bold over till repaid with Interest. Where tho' the Decree be figued and enrolled, yet the Time for Redemption may be enlarged. A Decree to foreclose Tenant in Tail. Against whom Redemption lies. If there may be a Right or Equity of Redemption against the King. A Bill to redeem lies against the Counsee of a Statute, who extends for Debt. Release of Equity of Redemption. Valuable Consideration, what. In a Bill for Discovery, the Mortgagee not compellable to make a Reconveyance of the Land. A Fine will not bar the Equity of Redemption. Release of Equity of Redemption as directed by a decretal Order in Chancery. A Bill to foreclose the Equity of Redemption.

ON a Bill in Chancery to be relieved against the Heir of the Mortgageor for Money received after his Father's Death for a Release of Equity of Redemption. Finch, Lord P 2 Keeper

received for Equity of Redemption no Affets in the

Keeper conceived this is no Assets in Law; WhereMoney to fatisfy a Judgment acknowledged by the Mortgageor after the Mortgage, and before the Release, being but a bare Right, and being not Assets in Law, the Release being Heir, and why before the Bill exhibited, is no Fraud, and fo not Assets in Equity. Decreed for the Defendant. 3 Keb. 307. Freeman and Taylor.

A Cafe like it.

Rolles reports thus: The Father is seifed of Lands in Fee, and is indebted to divers Creditors; he mortgageth this Land to 7. S. for Money paid on Condition of Redemption, which is after forfeited to the Mortgagee for Non-Payment; then the Father dies, and the Son and Heir, who is liable to Debt, joins with the Mortgagee in a Conveyance to another Purchaser, and this for Money given to the Heir, yet the Creditors of the Father shall not have any Remedy in Equity against the Son for the Money received by him for his joining of the Affurance, for that he had not in Law any Power of Redemption. 1 Rolls Abr. 580.

Debt by the Plaintiff as Administrator of Tidbury against the Defendant, Executor of another, Hancock conditioned, if the Obligor pay 2001. by the first of December, 1634, that then the Surrendree Hancock, the Teftator-should reconvey on Request. The Plaintiff alledgeth Request 1644, to which the Defendant demurred, and per Cur' the Surrender being absolute and in Trust only for Payment, there being no Payment at the Day, the

Mortgage

Mortgage is irredeemable. Judgment pro Def. Where the 3 Keb. 786.

Mortgage is irredeemable.

Hedworth and Primate. Trin. 18. Car. 2.

One acknowledgeth a Statute of 15001. for the Payment of 800 l. with Interest, which being forfeited, and Lands extended upon it at an annual Value, the Conusor for a valuable Confideration fettles the fame Lands in Tail, and then borrows more Money of the same Conusee, and Articles were between them; whereby it is agreed, That this Statute and Extent shall stand for the Security of the borrow'd Money: Conusor dies, and the Right of Entail descends upon the Plaintiff, and the Principal Money of 800 L with Interest is satisfy'd by the Perception of the Profits or otherwise. Per Cur', the Plaintiff can have no Relief against the Penalty of where no Rethe Statute, for both the Statute and the lief against Settlement in Tail were for valuable Confide. the Penalty rations, and the Money borrowed afterwards of the Staraiseth an Equity for the Conusee, and the nant in Tail. Heir hath an Equity by Reason of the Intail. Yet because the Conusee hath both Law and Equity on his Side, and the Plaintiff hath only Equity till the Penalty of his Statute be fatisfied; therefore the Plaintiff shall not be relieved till the Penalty be levied according to the extended Value, or by cafual Profits, as Mines or Trees, &c. But they held further. That the Defendant should not be relieved here in Equity for any Money lent Money lene fince the Settlement upon the Credit of his upon the Creformer Security, for then no Purchafer would mer Security. be fafe. In the Case between Pool and Dudley, and in this of Hedworth and Primate.

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Against

Against whom Redemption lies.

Pawlet's Cafe.

If there may be a Right or Equity of Redemption against the King.

In this Case it was a great Question, Whether there may be a Right or Equity of Redemption against the King? The Case was, Pawlet mortgaged Lands in Fee to Ludlow for 2000 L and bound himself in a Statute and Recognizance to perform Covenants, and to pay the Money at a Day. The Day is past, the Money not paid, the Mortgagee by his Will devised all his Goods, Chattels, Debts, and Personal Estate to his Executors. Edward Ludlow, Senior, and Heir of the Mortgagee is attainted of High Treason, the King seizeth, and the Executor extends the Plaintiff's Lands upon the Recognizance, who thereupon exhibits his Bill against the King and the Executor, and suggests that he could not pay the Money at the Day and Place by Reason of the Plague; and that afterwards the Mortgagee accepted the Inter reft, and waved the Forfeiture. It was held, That in natural Justice, Redemption of a Mortgage lies against the King, as well as there is Redemption against the Lord by Escheat (for so the King comes in here, and not Jure Prerogativa) but the King cannot be compelled to convey. Hardr. 468, 469.

A Bill to redeem lies as gainft the Conufee of a Statute who extends for Debts

A Bill to redeem lies against the Conuser of a Statute, who extends for a Debt due from the Mortgagee, and against a Tenant in Dower. Idem 466.

One seised in Fee in Consideration of 1000 l. paid to him by a Person that marry'd his Kinswoman, conveys to him and his Heirs, and takes a Redemise for ninety-nine Years if he should so long live, and covenants therein, That if he should pay 1000 l. (with Interest that should be then due) at any Time during his Life, that the Grantee should reconvey to him and his Heirs, and that if he did not pay the Money, his Heirs should have no Power of Redemption. He dy'd, the Money not being paid, the Heir preferred a Bill to redeem it. It was urged for him, That in a Conveyance which was a Security for Money whatever Covenant there is to exclude Redemption, fuch Covenant would not be regarded in this Court, and that the Person to whom the Conveyance was made, might have had a Bill in the Life-time of him that conveyed, to have a Time fet for the Payment of the Money, or to be foreclosed. But the Lord Keeper difmis'd the Bill. In a common Mortgage he faid fuch Covenant is not regarded, but this was made with an Intention of Settlement of his Estate, beside the Consideration of the Money paid, and he denied he should have been limited to any Time for the Payment of the Money by Decree here, for this Court cannot shorten the Time that is given by express Covenant and Agreement of the Parties, but when that Time is past, then the Practice is to foreclose. 2 Ventr. 364. Bonham and Newcomb.

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Release of Equity of Redemption.

Mortgageor articles with a Stranger for the Sale of the Lands mortgaged, and receives 50 l. of the Money, and afterwards the Mortgageor releaseth to the Mortgagee the Condition and Power of Redemption, and pending a Bill against himself and the Mortgagee for a Discovery and Performance, Sc. Releaseth to the Mortgagee all his Right in and to the Lands; but no Money or valuable Confideration appears to be given for either of these Releases. The Court held, That neither of these Releases ought to obftruct the Conveyance to the Purchaser by the Mortgageor, because they were given without valuable Consideration, and one of them hanging the Suit, and both the Releases ought to be set aside as to the Plaintiff: But because the Bill prays only a Discovery, the Mortgagee is not compellable by this Bill to make a Conveyance for Payment of Money and Interest. Hardr. 220. Hill Term, Worfely and Royfon.

Bill for Dif-

ValuableConfideration.

> Mortgages tho forfeited and the Equity of Redemption released, yet to pay the full Value or reassure the Land. Tot. 232.

A Fine will not bar an Equity of Redemption. Hardr. 512.

Stat. 4 and 5 W. and M. Cap. 16.

In what Cafes the Mortgageor shall have no Equity of Redemption. If any Person shall borrow any Money, or for any other valuable Consideration for the Payment thereof, shall acknowledge or suffer a Judgment, Statute or Recognizance to be entred against them, and shall afterwards

wards borrow any other Sum of any other Persons, or for other valuable Consideration. and for securing the Repayment or Discharge thereof, shall mortgage Land to the second, or other Lender or Lenders, or to any other Persons in Trust for him or them, and shall not give Notice to the Mortgagee of such Judgment, Statute or Recognizance in Writing, before the Execution of the faid Mortgage, unless such Mortgageor or his Heirs upon Notice given by the Mortgagee in Writing under Hand and Seal, attefted by two or more Witnesles of such former Judgment, &c. shall within fix Months pay off and discharge the same, and cause the same to be vacated or discharged by Record, such Mortgageor shall have no Benefit in Equity for Redemption of the Lands mortgaged. If any Person who hath or shall once mortgage Lands for Security of Money, or for other valuable Confiderations, shall again mortgage the same Lands, or any Part thereof, to any other Person (the former Mortgage being in Force) and shall not discover to the second Mortgagee, the first Mortgagee in Writing, fuch Mortgageor shall have no Relief or Equity of Redemption against the second Mortgagee.

But fuch fecond or other Mortgagees may

redeem any former Mortgage.

Strange to be the second to

This Act extends not to bar the Widow of any Mortgageor from her Dower, who did not legally join with her Husband in such a Mortgage, or otherwise lawfully exclude herefels.

Who, and in what Proportions shall contribute to a Redemption.

A. seised in Fee, deviseth to his Heir on Condition, that he pay to the Daughter of A. 500 l. at her Age of 16 Years, and on Default that she should enter and raise it. The Heir deviseth it to his Mother for Life. and afterwards to his Brother in Fee, and dies, the Mother enters, the Daughter under Age, and the Brother having the Reversion and Inheritance, exhibits his Bill to have his Mother to pay a Part of the 500 l. and fo it was ordered. So where A. had mortgaged the Manor of G. for 2500 l. and then deviseth to B. for Life, the Remainder to C. in Fee. C. preferred his Bill to force B. to pay his Share of the Mortgage Money; and fo it was decreed that he should. 223. Heyne's Cafe.

mortgaged Lands to B. for Life, Remainder to C. in Fee,

Devise of

Tenant for Life to pay one Third, Remainder to pay two Thirds, It was decreed in Cornish and Mene's Case, Hill. 27. and 28 Car. 2. That the Tenant for Life should pay one third, and he in Remainder two Thirds to redeem.

The Widow who had an Estate for Life, and the Infant Heir decreed to pay off a Mortgage on the Estate, (viz.) the Widow to be rated at one Third, and the Reversion in Fee to the Infant at two Thirds, 1 Ch. Rep. 218, Rowell and Whaley's Case.

Jointress decreed to pay Mortgage Money, &c. A Joyntress was of Lands mortgaged, and it was decreed in Bertue and Stiles's Case, That the Joyntress paying the Mortgage, she should hold over till she and her Executors should be repaid with Interest. Ch. Cases 271.

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Foreclosing Equity of Redemption.

There was a Decree to foreclose (the Money Where tho not being paid) yet the Court in Cases of a Decree be inevitable Necessity will enlarge the Time, figned and though the Decree be fign'd and inrolled; the Time may as was the Case of Cocker, Son and Heir of be enlarged. Edward Ludlow, a Colonel in the King's Army, and forced to leave the Kingdom; and for that Reason the Time was enlarged, especially if it be by Matter subsequent to the Decree. 1 Ch. Rep. 25. Inscord and Claypool's Cafe. 1 Cb. Rep. 262.

A Decree to foreclose Tenant in Tail from A Decree to redeeming, concludes his Issue, and the Re-foreclose Temainder, because that is a Right set up on- nant in Tail, ly in a Court of Equity, and may be here

extinguished. Ch. Cases 220.

Agreements about the Release of Equities of Redemption, and Pleadings therein.

Thorpe versus Thorpe.

Ssumpsit, and declares: Whereas the 19th Day of January, 1693, the Defendant had and held of the Plaintiff two Narration Closes in H. by way of Mortgage: And upon mutual whereas poftea (viz.) the faid Day and Year Agreement, at, &c. there was a Colloquium between the that the Said Defendant and Plaintiff, of and concern- Plaintiff aing the aforesaid Mortgage, and the releas- grees to reing the Equity of Redemption of the Plaintiff ty of Rethereto, and also of and concerning a certain demption, in Sum of Money were due and owing from Confideration the Plaintiff to the faid Defendant. And the Plaintiff af-Plaintiff agreed to make to the Defendant fumes to pay a good 7 %

Promises of

a good and fufficient Release of his Equity of Redemption to the Defendant, in Confideration whereof the Defendant then and there agreed to give and pay to the Plaintiff 71. over and above the Money which were due to the Defendant upon the faid Mortgage, and to deliver him the Plaintiff one Sack of Barley, and to acquit him of and from all Money which the Plaintiff owed to the Defendant, as aforesaid, and the said Defendant postea scilicet eisdem die & Anno apud, Sc. in Consideratione Agreamenti pradid, and alfo in Consideration that the Plaintiff, then and there had promifed to perform all Things in the faid Agreement on his Part to be perform'd, did promise to the Plaintiff, that he the said Defendant would perform all Things in the faid Agreement to be perform'd on his Part. And the Plaintiff avers Performance of all, generally on his Part; and though the Defendant in Pursuance of the faid Agreement had paid the Plaintiff 25 s. in Part, of the faid 71. yet had not paid the 5 l. 11 s. Refidue, nor deliver'd the Sack of Barley, nor acquitted him the Plaintiff of the Moneys aforesaid, to the Defendant due as aforesaid: Then he declares on Indeb. Assumpsit for 51. 15 s. for the Release of the Equity of Redemption, and lays it on the 29th of December in the same Year last mentioned. The Defendant pleads in Bar of the first Promise actio non. That post confection' promise ill' (viz.) 29 die Julii, 1694, by a certain Indenture bearing Date the Day and Year last mention'd, the Plaintiff released to him all Actions, Suits, &c. a general Release, which was contained in the Release of the Equity of Redemption, and

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as to the other Promise adio non, because that Promise was made before the said 20th of July, 1694, viz. The 1st Day of July in the same Year, and further saith, That the Bar by the aforesaid 29th Day of July, 1694, pleads the same Release same Release, by which the Plaintiff had re- by which the leased his Equity of Redemption ; absque boc released the ad' post confection Indentura prad' ipse idem De- Equity of Refend' assumpsit super se prout per eadem Pramiss' demption. præd' Superius Supponitur & boc paratus, &c. And the Plaintiff demands Over of the Indenture, Et ei legitur in bac verba. This Indenture made the 29th Day of July, &c. Anno Dom. 1694, between R. T. (the Defendant) of, &c. of the one Part, and J. T. (the Plaintiff) of the other Part: Whereas the Oper of the faid J. T. hath formerly by certain Deeds, Release of the Writings and Surrenders, conveyed and furrendred by way of Mortgage, and given up with a Straw into the Hands of the Lord of the Manor of Wakefield, called or known by the Name of, &c. now in the Tenure of, &c. being of the yearly Rent, &c. to the Lord of the faid Manor 8 d. and compounded for the Use and Behoof of R. T. and of his Heirs and Assigns for ever. And whereas likewise the said I. T. hath also formerly by certain Deeds, Writings and Surrenders, conveyed and furrender'd by way of Mortgage all that his capital Messuage, &c. to the Use of T. H. his Heirs and Affigns for ever: Now this Indenture witneffeth, That the faid J. T. hath released to the said R. T. and T. H. and their Heirs, all Provisoes and Conditions in the faid Deeds, Writings and Surrenders, mentioned and contained, as in and by the faid Deeds, Writings and Surrenders, Relation being thereunto had, may more fully and

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and at large appear. And also doth now by these Presents for ever acquit and release all his Estate and Right both in Law and Equity of Redemption, Title, Claim and Demand whatfoever, to the faid Lands, Meffuage, and all and fingular the Premisses, and every of them, and that he the faid J. T. doth by these Presents, remise, release and for ever quit Claim unto R. T. and T. H. aforesaid, their Heirs, Executors, Administrators and Affigns, all and all Manner of Actions. Suits, Causes, and Accounts, Debts, Duties, Reckonings, Sum and Sums of Money, and Demands what foever, which he the faid J. T. ever had, or which his Heirs, Executors, Administrators or Assigns, or any of them in Time to come, can or may have, to, for, or against the said R. T. and T. H. their Executors, Administrators or Assigns, for or by Reason of any Matter, Case or Thing whatfoever. In Witness, &c.

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The Question was, Whether by this Release the Action is released. Per Cur. The Release was a Consideration precedent of the Promise, and the Ground and Foundation of the Action, and until this was done, the Plaintiff had no Cause of Action vested in him; and for that also, it was not the Intent of the Parties, that the Release should be a Discharge of the Duty which was to be created by it: And the Case of Potter and Phillips 218. 2 Cr. 627, was cited. A Writ of Error was brought, and the Judgment given in the Common Pleas was affirmed. That the Defendant's Promise is not released. It was urged at the Bar, That if the Plaintiff might have an Action upon the Defendant's Promise before the making of the Release, that

that then the Release should be a Bar to the Plaintiff; and this Consequence was agreed if it should be so; but in this Case the Plaintiff might not have an Action before the Release made; for the Release of the Equity of Redemption, is that which intitles the Plaintiff to his Action for the 71. It was urged further, to prove, that the Plaintiff might have an Action before the making of the Release, that they are mutual Promises, and in fuch a Case there need not be alledg'd Performance on the Plaintiff's Part. This was agreed to be generally true, but then it depends on the Words of the Agreement, whether it shall be so or not; and certainly one may make the Agreement fo, that one shall not be obliged to part with his Money until he had a Consideration for it. And in this Case the Agreement is, That the Plaintiff shall release the Equity of Redemption. in Consideration of which the Defendant is to pay 7 l. so that the making of the Release is a Condition precedent to the Payment of the Money. I Lut. 245. Thorpe and Thorpe's Cafe.

A Release of Equity of Redemption, as directed by a Decretal Order in Chancery.

This Indenture made, the, &c. between A. B. of, &c. Esq. Son and Heir of Sir A. B. late of &c. Kt. deceased, of the one Part; and C. D. of, &c. Gent. of the other Part: Whereas by Indenture bearing Date, &c. made between the said Sir A. B. by the Name of &c. of the one Part, and the said C. D. by the Name of C. D. of, &c. of

the other Part, the faid Sir A. B. for the Confiderations therein mentioned, did grant, demise, bargain and sell unto the said C. D. all that Messuage, &c. (recite prout in the Indenture) and all and fingular Ways, Waters. Water-Courses. Common of Pastures, Woods, Underwoods, Hereditaments, Profits, Easments and Appurtenances whatsoever unto the said above mentioned to be demised Premisses, or any Part thereof belonging, or in any wife appertaining, or therewith used occupied or enjoyed, reputed or taken as Part. Parcel or Member thereof or of any Part thereof, and the Reversion and Reversions, Remainder and Remainders. Rents, Issues and Profits, of all and fingular the faid above mentioned to be demised Premisses, and of every Part and Parcel thereof, and all Rents and other Profits referved or from henceforth payable, for and upon any Leafe or Leafes thereof, or of any Part thereof, and all the Estate, Right, Title, Interest, Use, Property, Claim and Demand whatfoever, either in Law or Equity of him the said Sir A. B. of, in, and to all or any of the faid Premisses, or of, in. or to any Part or Parcel thereof, with their and every of their Appurtenances. To have and to hold, all and fingular the above mentioned to be demised Messuage, &c. with their and every of their Appurtenances, and the Reversion and Reversions thereof unto the faid C. D. his Executors, Administrators and Affigns, from the Day next before the Day of the Date of the said Indenture, for and during, and unto the full End and Term of 99 Years, from thence next enfuing, and fully to be compleat and ended, without Impeachment

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peachment of or any Manner of Waste, at and under the yearly Rent of one Pepper-Corn, payable at the Feaft of St. John the Baptiff, if the same shall be lawfully demanded, in which faid Indenture of Demise is contained a Proviso or Condition, Nevertheless, that if the said Sir A. B. his Heirs, Executors or Administrators or any of them should pay or cause to be paid unto the faid C. D. his Executors, Administrators or Affigns, the Sum of, &c. of lawful Money of England, together with lawful Interest for the same, at the Days and Times in the faid Indenture mentioned, that then the faid Indenture should be void, as in and by the faid Indenture of Demise, Relation. &c. and whereas the faid Sum of &c. nor any Part thereof, or any Interest for the same was paid, at the Times in the said Proviso limited and appointed for the Payment thereof, nor at any Time fince, whereby the Estate granted to the said C. D. in the faid Premisses became absolute, and he received Judgment at Law, and was put into the Possession thereof, by the Sheriff of the said County of &c. by Vertue of an Execution upon the faid Judgment. And whereas by a Decree or Decretal Order made in a certain Caufe depending in the High Court of Chancery, between the faid C. D. Complainant and the said A. B. Defendant, bearing Date, &c. It was ordered and decreed, that upon the faid A. B.'s Payment of what, &c. one of the Masters of the said Court should certify to be due to the faid C. D. for Principal, Interest, and Costs, by the first Day of the then next Term, the faid C. D. should convey the faid mortgaged Premisses to the faid A.B.

or to fuch Person or Persons as he should appoint, free of all Incumbrances committed or done by him, or any Person or Perfons claiming by, from, or under him; but in Default of the faid A. B's Payment of what the said Master should certifie to be due to the faid C. D. as aforesaid, then it was ordered and decreed, that the said A. B. should be absolutely foreclosed and debarred from all Equity of Redemption, and deliver upon Oath all Deeds and Writings that he had or could come by that related to the Premisses, and convey all the Right, Title or Interest, which he had in the Premisses unto the said C. D. in such Manner as the faid Master should direct. And whereas the faid Mafter, in Pursuance of the faid Order, made his Report bearing Date, &c. last past, whereby he certify'd due to the said C. D. the Sum of, &c. for Principal, Interest, and Costs, and appointed the faid A.B. to pay the fame to him on the last past; as by the said Degree, or Decretal Order, and Report, Relation being thereunto had, more at largeth appeareth. And whereas the said A.B. hath not paid the said, &c. nor any Part thereof, according to the faid Order and Report: Now this Indenture witnesseth, that the said A. B. in Obedience to. and in Pursuance of the said Decree, and for and in Confideration of the Sum of 5 s. of lawful Money of England, to him in Hand paid by the said C. D. the Receipt whereof he doth hereby acknowledge, hath granted, released and confirmed, and by these Prefents doth grant, release and confirm unto the faid C. D. his Executors, Administrators and Assigns, the said Messuage, &c. with their

their and every of their Rights, Members and Appurtenances, and the Reversion and Reversions. Remainder and Remainders thereof, and also all the Estate, Right, Title, and Interest both in Law and Equity of the faid A. B. in, to and out of the same, and every Part and Parcel thereof, together with all Deeds, Evidences and Writings touching and concerning the same Premisses only, and true Copies of all fuch Deeds and Evidences as concern the same jointly or together with any other Lands and Tenements, to have and to hold the said Messuage, &c. and all and fingular other the Premisses hereby granted and released, or meant, mentioned or intended to be hereby granted and released unto the faid C. D. his Executors, Administrators and Affigns, for and during all the rest, Residue and Remainder of the faid Term of 99 Years yet to come and unexpired absolutely foreclosed, and debarred of and from the Proviso of Redemption in the said recited Indenture mentioned, and from all Benefit and Equity of Redemption whatfoever.

With a Covenant for further Assurance.

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private the part because the same about aller or yet revised to the forest on the body and the manage A Bill to foreclose the Equity of Redemption.

Mortgage in Fee to Trustees for the Mortgagees, and as a further Security the same assigned to the Mortgagees for 1000 Tears. Trustees, Mortgagees and Mortgageor by Bargain and Sale in Fee, and by Assignment of the 1000 Tears convey the same to and in Trust for the Plaintiff. The Defendant borrows 501. of the Plaintiff on the same Security.

To the Right Honourable, &c.

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TTUmbly complaining, &c. your Orator A. B. of, &c. That J. L. ot, &c. having Occasion for the Sum of 200 l. of lawful Money of England, did upon or about, &c. apply himself unto I.C. of, &c. and W. I. of, &c. and defire to borrow the faid Sum of 200 L of the faid I.C. and W. I. and did also affirm, That he the said J. L. was lawfully feifed in his Demelne as of Fee or some other good Estate of and in those several Meffuages or Tenements herein after mention'd, and did propose to mortgage the same to the faid I.C. and W. I. as a Security for the Repayment of the faid 200 l. and Intereft, if they would lend him the same. And accordingly there was on or before the 10th Day of &c. paid by the faid I. C. and W. J. or their Order, to the faid J. L. the Sum of 200 l. of lawful Money of England, and thereupon, and for the securing the Repayment of the same with Interest, and in Consideration of the same the said I. C. did in and by certain Indentures of Lease and Release, bearing Dare the 4th and 5th Day of M. in the

Mortgage in Fee.

the Year &c. bargain and fell, release and confirm unto R. R. of, &c. and H. N. of, &c. all those two Messuages or Tenements with the Appurtenances, fituate and being, &c. and all the Estate, Right, Title, Interest, Claim, Property and Demand whatfoever, either in Law or Equity, of him the faid I. L. of, in and to the faid Premisses, and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits thereof, to hold unto the faid R. R. and H. N. their Heirs and Assigns for ever, in Trust never. To Trustees. theless to and for the Use of the said I. C. and W. I. their Heirs and Assigns, or to the like Effect as in and by the faid feveral Indentures of Lease and Release, Relation being thereunto had, may more fully appear. And the faid I. L. thereupon, and for the further Security of the Repayment of the faid 200 1. And a Term with Interest and Consideration for the same of 1000 Years in and by his certain Indenture of Affign- to the Ceffug ment, bearing Date, &c. did grant, assign and further Secufet over unto the faid I. C. and W. I. all and rity for the fingular the aforefaid Meffuages or Tenements, Repayment, with their Appurtenances, and all his Estate, Right, Title, Interest and Term of Years therein, to hold unto the faid I. C. and W.I. their Executors and Affigns for the Remainder of a Term of 1000 Years commencing from the, &c. as by the faid mentioned Indenture, Relation being thereunto had, may more fully appear, which faid feveral Conveyances and Affurances, Bargain, Sale and Affignment of the Premisses, were in and by Indentures bearing Date, the faid, &c. declared by the faid I.C. and W. I. to be only a Security for the Repayment of the faid 200 l. with Intereft, and Consideration for the same, and in

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Proviso.

and by the faid Indenture the faid I. C. and W. I. did covenant and agree to and with the faid I. L. his Heirs and Assigns, That if he the faid J. L. his Heirs, Executors or Affigns, did and should well and truly pay or cause to be paid unto the said J. C. and W. I. their Executors, Administrators or Assigns, the full Sum of, &c. at fuch and fuch Times (prout in the Deed) then the faid above mentioned Indentures of Affignment, and Bargain and Sale of the Premisses aforesaid, made by the faid I. L. unto the faid I. C. W. I. B. B. and H. N. and the Estate and Interest thereby granted and made should be null and void: And in and by the faid last mention'd Indenture the faid J. L. did covenant well and truly to pay or cause to be paid unto the said I.C. and W. I. the faid Sum of 2121. upon the Days and Times therein before limited and appointed for the Payment thereof, according to the Agreement aforesaid, as by the one Part of the Indenture of Defeafance under the Hand and Seal of the faid J. L. Relation being thereunto had may more at large appear. And your Orator further sheweth, That the faid I. C. and W. I. having urgent Occasion for their Money so as aforesaid lent unto the faid I. L. and calling in the fame, and the faid J. L. having Occasion for the Sum of 350 l. of lawful, &c. to discharge the aforesaid Mortgage, and for his further Occasions, did on or about the Month of, &c. apply himself unto your Orator, and defire Sum taken up to borrow that Sum of your Orator, and did also affirm unto your Orator, that he was lawfully seised in his Demesne as of Fee, or paid off, but some other good Estate of and in the aforethe Morrgage faid Premisses, and did propose to mortgage

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the fame unto your faid Orator as a Security or the Repayment of the faid Sum of asc !. and Interest, it he would lend him the same. and accordingly, there was on or before the 19th Day of, &c. paid by your Orator or his Order, to the faid I. L. and his Order, the Sum of 350 l. that is to fay, to the faid I.C. and W. I. the Sum of 200 L and to the faid I. L. the Sum of 150 L and thereupon and for the securing the Repayment of the said 250 l. with Interest and Consideration for the same, in and by certain Indentures of Lease and Release, bearing Date the 18th and 19th Days of, &c. the faid B. B. and H. N. by the Direction and Appointment of the faid I.C and W. I. and also of the said J. L. by the Direction and Appointment of your Orator, did bargain, fell, release and confirm unto H. N. of, &c. and P. K. of &c. all the aforementioned Messuages and Tenements, with And Security their Appurtenances, and all the Estate, Right, by the Pre-Title, Interest, Property, Claim and Demand miles. whatfoever, either in Law or Equity of them the faid B. B. H. N. and I. T. of, in and to the faid Premisses, and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits thereof, unto the said H. N. and P. K. their Heirs and Assigns for ever, in Trust nevertheless to and for the Use of your faid Orator, his Heirs and Affigns, or to the like Effect; as by the several Indentures of Leafe and Releafe last mentioned. Relation being thereunto had may more fully appear. And for the further fecuring the Repayment of, &c. with Interest, the faid I.C. and W. I. by the Direction and Appointment of the faid J. L. and also the faid J. L. in Consideration of the aforesaid respective Sums of Money

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Plaintiff lent the Mortgageor 750 l. on Bond.

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Money to them respectively paid, in and by their certain Indenture of Assignment, bearing Date, &c. did grant, affign and fet over to your Orator, all. &c. and all their Estate, Right, Title, Interest and Term of Years therein, to hold unto your Orator, his Executors, &c. for the Remainder of the faid Term of 1000 Years: And in and by the faid last mention'd Indenture it is provided and declared, That if the said I. L. (Here insert the Covenant in the Assignment for the Payment of the Money.) And in and by the faid Indenture the faid J. L. did covenant with your faid Orator (Here insert the Mortgageor's Covenant for Payment) as in and by the faid last mention'd Indenture, Relation being thereunto had, may more fully appear. And your Orator further sheweth, That the said I. L. by his Bond or Obligation, dated, &c. became bound unto your faid Orator in the penal Sum of 700 L on Condition for Payment of 371 l. at &c. as by the faid Bond or Obligation, with the Condition thereunto written, Relation, &c. And your Orator further sheweth, That the said I. L. having Occasion for the further Sum of 501. did on or about, &c. apply himself unto your Orator, and defir'd to borrow that further Sum of your Orator, and proposed to secure the Repayment thereof, with Interest upon the aforefaid Premisses; and accordingly there was on or before the, &c., Day of, &c. paid by your Orator, or his Order, to the faid I. L. the further Sum of 50 h and thereupon, and for securing the Repayment thereof with Interest, and by a certain Writing, bearing Date, &c. the faid J. L. did thereby covenant and agree to and with your Orator. That the faid

faid Premisses should remain and be a Security unto your Orator, for fecuring the Repayment as well of the faid sol and Interest, as of the aforesaid 350 l. and Interest. before any Equity of Redemption should be fued for or had by the faid J. L. his Executors, Administrators or Assigns, and that he the faid J. L. his Executors, &c. (Here recite the Covenant for Payment) as in and by the said Writing, &c. And your Orator further sheweth, That the faid J. L. hath neglected to pay the faid Debt, so that the Principal Sum of 400 l. and all Interest for the same remain due and unpaid to your Orator, whereby the faid mortgaged Premisses are become forfeited, and the Estate and Interest of your Orator and his faid Trustees respectively in the Premisses are become abfolute, and unless your Orator may forthwith be paid his Principal, Interest and Costs, the Premisses ought to be held by your Orator and his Trustees, according to their respective Estates therein, fully barred and foreclosed of and from all Manner of Equity and Benefit of Redemption by the faid I. L. his Heirs and Athigns. But now so it is, may it please your Lordship, That the said J. L. designing to defraud your Orator of his faid just Debt, Suggestion. or at least wife by delaying the Payment thereof to induce your Orator to accept of fome Composition for the said Debt, gives out in Speeches and Pretences, that the same mortgaged Premisses are liable to some prior Incumbrances, but refuseth to discover what the same are; whereas in Truth if the said mortgaged Premisses, or any Part thereof, were at any Time heretofore charged with, or any way made liable to any Incumbrances precedent

precedent to the faid Conveyances and Affignments, fo made as aforefaid unto your Orator, and his faid Truftees respectively, the same have been long fince paid off and satisfy'd, or otherwise discharged, or at leastwife the faid I. L. ought to fatisfie and difcharge the same, that your Orator and his faid Truftees may be enabled to hold and enjoy the Premisses, free from Incumbrances according to the Covenants and Agreements in the faid Mortgages and Affignments contained; and fometimes the faid J. L. pretends, that if your Orator should enter upon the Premiffes and receive the Profits thereof, that he will at his own Leifure call your Orator to an Account for the same, and afterwards redeem the fame when the faid Debt shall be fatisfy'd out of the Rents and Profits, fo that your Orator shall be enforced to become an Accountant to the faid J.L. and shall not be able to fell the said mortgaged Premisses, for satisfying the Money due to your Orator; and altho' your Orator hath in a friendly Manner requested the said J. L. to pay him the said 400 l. Principal and Interest, and offered that upon Payment thereof, that both he and his Trustees shall and will reconvey the faid mortgaged Premisses to the faid J. L. and his Heirs, &c. nevertheless the said I. L. designing to defraud your Orator, or at least to make him uneasy under the faid Mortgage, doth wholly refuse to pay the faid Debt, or to discover what Incumbrances the Premisses are liable unto. whereby your Orator is greatly in Danger to lose his said Debt, or at least to be put to very great Charges and Difficulties; in tender Confideration whereof, and for that your Orator hath no Way or Means to obtain an absolute

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absolute Estate in the said Premisses foreclosed of all Equity of Redemption, without the Aid of this Honourable Court, nor discover what Incumbrances the same are liable unto but by a Confession thereof upon the Oath of the said I. L. your Orator's Witnesses, &c. To the End therefore the faid I.L. may true Answer make unto all and fingular the Premisses, and may fet forth and discover whether he did not execute fuch Conveyances as aforefaid, for fecuring the faid Sum of 200 l. and Interest unto the faid I. C. and W. I. in Manner as aforefaid. and whether he did not aftewards borrow of your Orator the faid feveral principal Sums of 330 l. and 50 l. and whether the Premisses were not conveyed and affigned to your Orator and his Trustees in such several and respective Manner, and under such Provisoes and Conditions of Redemption as herein before is fet forth; and whether the faid feveral principal Sums and Interest are not still remaining due and unpaid, and whether any or what Part hath been paid to your Orator, and when and by whom; and whether the Premisses or any or what Part thereof are liable to any Incumbrances; and may shew Cause if he can, why he doth not pay the faid principal Money and Interest to your Orator, upon Payment thereof your Orator being ready for himself, and to procure his Trustees to make such Reconveyance of the Premisses as shall be thought reasonable; and that in Default of Payment thereof, that the faid I. L. may be absolutely barred and foreclosed by Decree of this Honourable Court. of and from all Equity and Benefit of Redemption of the Premisses, and that your Orator may be relieved in all and fingular the Premisses, &c. CHAP.

CHAP. XV.

Select Cases of Pawns and Pledges. When no Time is appointed for the Redemption, whether the Money may be tendered after the Death of him who pledged it. Diversity between a Mortgage and a Pledge. Where a Custody only and no Interest. Of Tender and Refusal. What Property he that pawneth the Goods hath till Redemption or Forseiture. Goods not forseitable, for any Offence of the Party that hath them in Pawn. Goods pawned, and no Time set for the Redemption. Bona peritura pawned are stolen. What shall be necessarily intended in a Declaration.

SIR John Ratcliff was possessed of an Hatband set with Pearls and Diamonds, and pawn'd it to John Whitlock for 25 l. but no certain Time appointed for the Redemption thereof. Whitlock being sick, his Wife in his Presence, and with his Assent delivered it to the Desendant Davies, and afterwards he made his said Wife Executrix and dy'd, who proved the Will. The Plaintiss tendered to the Executrix the 25 l. who resused, and afterwards demanded the Hatband of the Desendant, who resused to deliver it, but converted it to his own Use.

It was refolved in this Case. 1. There being no Time appointed for the Redemption; yet it may be well made after the Death of him to whom it was pledged, but not afthe Death of him who pledg'd it; for pledging doth not make an absolute Property (though Mortgage of Land doth) but is a Delivery only till he pays: So it is a Debt due unto

When no Time is appointed for the Redemption, whether the Money may be tendred after the Death of him who pledged it.

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unto the one, and a Retainer of the Thing Diversity beto the other, for the which there may be a Redemand at any Time upon the Payment of the Money; for the Pledge deliver'd is but as a Security for the Money lent, fo as he who borrows the Money is to have again his Pledge when he repays it, and his Tender gives him Interest therein.

2. It was resolved, That by this Delivery of the faid Goods by the Feme, with the Affent of her Husband to the Defendant, there passeth no Interest in them to the Defendant, but (as it were) a Custody only, and Custody only therefore the Tender of the Redemption ought and no Inter to be made to the Executrix only, and not to the Defendant.

3. That when he tendred the Money to Tender and the Executrix, and she refused, it was as good as Payment; and the special Property of the Goods is revefted in the Plaintiff: Then when he demanded them of the Defendant and he refused to deliver them, Trover well lies altho' he came to them by a lawful Delivery. Judgment pro Quer. Cr. Fac. 244, 245. Sir John Ratcliff against Davies, Tel. 178. 1 Buftr. 29.

dell seek your again C in Deed, the total for, his Moire; Pledges or Pawns are (in Law.

As when a Chattel personal is pawned for Money, that is a Pledge in Deed. A Pledge in Law is faid to be where one puts a Garment to a Taylor to make, when he hath made it he may keep it till he be paid for the making of it, but he cannot fell or use it. THE STREET STREET AND ADDRESS OF SOL

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Not forfeitable by the Party that hath them in Pawn.

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建国际企业 **建筑等价值** He that pawneth the Goods till the Day of Redemption or Forfeiture, hath fuch a general Property in them, as if in this Time they be calually loft, he must abide by the Loss, and they cannot be forfeited by the Party that hath them in Pawn for any Offence of his, nor may they be taken in Execution or attach'd for his Debt. Owen 124. Vide plus ibid.

If one pledge Goods for Money, and no Time is fet for the Redemption, it may be redeemed after the Death of him to whom it is pledged, but not after the Death of him that pledged it. Vide Supra, Cr. Fac. 224,

> Where Goods are pawn'd, and no Time fet. they are redeemable at any Time during the

Where Goods are pawn'd, and no Time fet. and the Goods be perishing, and the Pawner lets them lie till they are spoiled; as Corn. Oil &c. and there is no Default in him that hath them in Keeping; the Party that pledged shall suffer the Loss of them; and he to whom they were pledged, may have Debt for his Money, 4 Rep. 38. 1 Inft. 89. Telv. 178.

If Goods pawned are stolen, the Party to whom, &c. shall not answer. Vide 1 Inft. 89.

4 Rep. 32, 38.

The Party that pawns the Goods till the Day of Redemption or Forfeiture, hath fuch a general Property in them, that as if they are casually loft, he must abide by the Loss. He that hath them in Pawn, hath a special Property

Property in them, as to milk a Cow, work an Horse, but not to abuse them, so if the Goods

are taken away from him.

Assumpsit: Whereas T. Lord B. 1 April. 39 Eliz. was posses'd of an Abiliment of Gold, &c. ad valentiam 100 l. and pledged and delivered them the same Day and Year to the Plaintiff for 400 l. And whereas the faid Lord B. was indebted to the Plaintiff, 25%. for Silver Plate which he fold and deliver'd to the Lady F. Wife of the faid Lord B. and that he being so indebted dy'd; that the Defendant May 29, 40 Eliz. in Confideration the Plaintiff would at the Defendant's Request deliver to the said Lady B. being a Widow, the faid Goods and Chattels, adtunc exiften' ad valentiam 500 l. pledged unto him, ut prefertur for 403 l. 6 s. 8 d. by the Defendant to be paid, promised, that he would pay to the Plaintiff the 25 l. when he should be requested, and alledgeth in facto, that he did on the said 9th of May, 40 Eliz. at the Defendant's Request, upon the Payment of the faid 403 l. 6s. 8d. deliver to the faid Lady B. the faid Goods and Chattels fo pledged to him, and that the Defendant licet fuch a Day he was requested, had not paid the said 25 l. And Verdict pro Quer. It was moved in Arrest of Judgment.

1. That the Confideration was not good, because the Declaration is in Regard that the Lord B. was indebted to him 25 l. for Plate fold and deliver'd to his Wife to his Use: What shall be But it's not averred, that the Baron agreed necessarily thereto, or that it came to his Use, sed non intended in a allocat', for it shall necessarily be intended.

2. The Declaration is not good, because it is not averred, that they were of the Value

Declaration.

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of 500 l. at the Time of the Delivery of them to the Lady B. for that is the principal Part of the Consideration, fed non allocatur, for being delivered the same Day of the Assumpsit, they shall be intended to be of the same Value.

3. The Pledging being for 40 l. and the Goods alledged to be of the Value of 500 l. the Delivery of them for 403 l. was held to be a good Confideration. Cr. Jac. 257. Beerblock and Mitchel's Cafe.

Mortgaged Goods, if they are not redeem'd shall not be forfeited by Outlawry, and if Money be tendred to redeem them, and a Refusal to deliver them, this hath been adjudg'd

a Conversion. 1 Bulftr. 29.

But the clearest Rules to be observed in the Case of Pawns or Pledges, are those which were delivered by the late Lord Chief Justice Holt in the Case of Coggs and Bernard, Trin. 2 Anna, B. R. viz.

2 Salk, 522, 523. 1. That Vadium, a Pledge or Pawn, is from the Verb Vador, to become Surety or Pledge for another. Vide Hottoman, Calepine, in verbo.

2. That in the Case of a Pledge or Pawn, the Pawnee hath a (special) Property in it, for it is a Security to him, that he shall be

repaid the Money lent thereon.

3. That if the Thing pawned may be the worse for using, as Cloaths, Houshold Goods, Instruments, &c. there the Pawnee cannot use them except it be expressly so agreed. But

4. That if they will not be the worse, as Plate, Jewels, &c. there the Pawnee may use

them

them (i.e. fo as not to prejudice them) but this must be at his Peril. For

5. If in this last Case the Pawnee is robb'd. &c. he is liable to answer it to the Pawner. For the Pawn is fo far in Nature of a Depositum, that it can't be used but at the Peril of the Pawnee; and it was the Using that occasion'd the Loss. Vide Owen 421.

6. But if the Pawn is laid up by the Pawnee, and he is robb'd thereof, he is not an-Iwerable (Quere the Reason, for he has an

extraordinary Reward for keeping it.)

7. If the Pawn is of fuch a Nature, That the Keeping is a Charge to the Pawnee, as a Cow or Horse, he may milk the one, or ride the other; and this is as a Recompence for his extraordinary Care in Keeping.

8. If a Creditor takes a Pawn, he is bound to restore it upon the Repayment of the Debt. But if his Care of keeping it be exact, and vet the same is loft, he shall be excused, for

there was no Default in him.

9. And where in fuch a Case it is lost, the Pawnee has still his Remedy against the Pawner for the Money lent: For the Lawrequires nothing extraordinary of him, but only to take what Care he can to restore the Goods on Payment of the Money.

10. Therefore if a Pawn be loft before Tender of the Money, the Pawnee is not liable, unless there was an apparent Default in him.

11. But if he keep them after the Money tendred, and they are then loft, he shall be liable, because his Property is determined by the Tender, and he then becomes a wrongful Detainer.

12. For he who keeps Goods wrongfully must answer for 'em in all Events at his own Peril:

The Law of Woztgages.

Peril; for his wrongful Detainer was the Occasion of the Loss.

And in another Cause anonymous, Pasch. 5 W. 3. Twas declared by Holt C. J. and

Eyre Justice.

13. Where a Pawnee refuses on Tender of the Money to re-deliver the Goods, he may be indicted; for being secretly pawned, it may be impossible to prove a Delivery in Trover for want of Witnesses.

3 Salk. 267.

3 Bulft. 17.

14. Where Goods are pawned redeemable at a Day certain, the Pawnee, in Case of Failure of Payment at the Day, may fell them. 1 Rolls Rep. 215.

without any Day of Redemption, and the Pawner dies, the Pawn is absolute and irredeemable; but not so if the Pawnee dies. Noy 137.

1 Bulft. 9.

lent, and afterwards a Judgment is had against the Pawner at the Suit of one of his Creditors, the Goods in the Hands of the Pawner shall not be taken in Execution upon this Judgment until the Money is paid to the Pawner, because he had a qualified Property in them, and the Judgment Creditor had only an Interest.

4 Ca. 83.

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17. And this is agreeable to Southcot's Cafe, where a Man deliver'd Goods to another to keep safely, and they are afterwards stolen, he shall be answerable for them in an Action of Detinue; because when they were deliver'd to him he undertook to keep them safely; and therefore he ought to keep them so at his Peril, though he hath no Reward. 2.

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18. But if he takes Goods to keep them as his own, and they are afterwards stolen, he shall not be liable; and the same Law if they are pawned to him (and stolen) because he hath a qualified Property in them.

Assignment of a Mortgage for Tears, and Release of Equity of Redemption by Indenture Tripartite, reciting the original Lease in Trust, and the Assignment of the Lessee and his Trustee to J. B. and J. B.'s Assignment of the same to H.S. H. S. and J. B.'s Assignment to E.G. for the Mortgage Money to H. S. and a further Sum to J. B. with a Confirmation of J. B. and discharge of the former Equity of Redemption and Sale absolute.

HIS Indenture Tripartite made, &c. 1 between Matthew Gaine of Bishop Stafford in the County of Hertford, Gent. Executor of the last Will and Testament of Eliz. Gaine, late of L. Widow, deceased, of the first Part; Joan Blundell of, &c. Widow, Relict and Administratrix of John Blundell of, &c. of the second Part ; and Anthony Hoile, of, &c. of the third Part. Whereas by Indenture Tripartite, bearing Date on or about, Esc. and made or mentioned to be made between the Right Hon. P. Earl of L. of the first Part, Richard Fryth, Citizen and Bricklayer of London, of the second Part, and the faid John Blundell of the third Part; the faid P. Earlof L. at the Nomination and Request of the said Richard Fryth, testified by his being made a Party to the said Indenture, and his Signing and Sealing thereof, did in Purfuance of Articles therein mentioned, leafe, R 3 fèt

fet and to Farm let unto the faid I. B. his Executors, &c. All that Piece or Parcel of Ground fituate near a certain Field or Place called Leicester Fields, fronting South, on a certain Street then called or intended to be called, &c. and containing in the faid Front from East to West, &c. Feet of Assize or thereabout, and in Depth from North to South, &c. abutting West on &c. and East on, &c. And also the Messuages and Tenements, and all other Edifices and Buildings then or heretofore erecting or erected, or to be erected and built upon the faid Piece or Parcel of Ground thereby demised, or any Part or Parcel thereof. And also all Ways Passages, &c. (which faid Piece or Parcel of Ground thereby demised or intended to be thereby demised with the faid House or Houses thereupon built, the same is more plainly described in the Plot thereunto annexed) To have and to hold to the faid John Blundell, his Executors, &c. for 41 Years, at and under the yearly Rent of a Pepper-Corn only for the first Year of the faid Term, and at and under the yearly Rent of 3 l. for the remaining forty Years of the faid Term, payable half yearly (as therein is mentioned) on which faid Piece or Parcel of Ground the said 7. Blundell did erect one good Brick Messuage or Tenement. And whereas by Indenture of Assignment, bearing Date the Fourth Day of October, Anno Dom. 1684, and made or, &c. between John Blundell (in his Life-time) of the one Part, and Henry Southouse (by the Name of Henry Southouse, Citizen, &c. of the other Part, reciting, as herein before is recited) the faid 7. Blundell, for the Confideration therein mentioned, did grant, bargain, sell, affign and

and fet over unto the faid Henry Soutbonfe, his Executors and Assigns, the said therein and herein recited Indenture of Leafe, and the faid Piece or Parcel of Ground, Meffuage or Tenement thereon erected and built, and all and fingular the faid Premisses therein and thereby, or meant, mentioned or intended to be therein and thereby demised, as also all the Estate, Right, &c. of the said 7. Blundell, or which the faid J. Blundell, then had or ought to have had into or out of, &c. To have and to hold for the Rest, Residue and Remainder, &c. subject to a Proviso or Condition of Redemption therein contained, to be void on the said J. Blundell, his Executors or Assigns, Payment of 154 l. 10 s. unto the faid H. Southouse, his Executors, &c. on the 5th Day of April then next enfuing the Date of the same Indenture of Assignment (as by the faid &c.) And whereas the faid Sum of 1541. 10 s. was not paid at, &c. whereby the faid Estate and Interest of the faid H. Southouse in the faid Premisses became absolute; and whereas by Indenture Tripartite of Affignment, bearing Date, &c. and made or mentioned to be made between the faid H. Southouse (by the Name of &c.) of the first Part, the faid J. Bl. (by the Name of C. &c.) of the second Part, and the faid Eliz. Gaine (by the Name of, &c.) of the third Part, reciting, as therein and herein before is recited, the faid H. Southoufe, by and with the Consent of the said 7. Bl. testified, &c. and for and in Confideration of the Sum of 150 l. of, &c. in Hand paid by the said Eliz. Gaine to the faid H. Soutboufe before the Sealing and Delivery thereof, and for the Consideration of the further Sum of 50 l. of, R4

Fac. therein also mentioned to be paid by the Said Eliz. Gaine, to the Said 7. Bl. before, &c. the faid H. Soutboufe did bargain, fell and affign, and fet over unto the faid Eliz Gaine. her, &c. the said recited Indenture of Lease, Indenture of Assignment, Piece or Parcel of Ground, &c. and all her Estate and Interest therein; and the faid J. Bl. did thereby ratify and confirm the same unto the said Eliz. G. her, &c. released and discharged of and from all Equity and Benefit of Redemption thereof Subject to an Equity of Redemption thereof on the faid J. Bl. his Executors, &c. on Payment of the Sum of 200 l. as of, &c. unto the said Eliz. G. her, &c. at or upon fuch a Day &c. and that then the faid El G. her. &c. should and would upon Request and at the proper Costs and Charges in the Law of the said 7. Bl. his, &c. assign, &c. unto the faid J. Bl. his Executors, &c. or to fuch other Person or Persons as he or they should nominate, as to and by the said Indenture Tripartite of Assignment amongst divers the Covenants, Conditions and Agreements therein contained may more at large appear,

And whereas the said principal Sum of 2001. was not paid at, &c. nor at any Time since, but the whole principal Sum of, 2001, together with the Sum of, &c. for the Interest thereof is still owing, and the said F. B. is dead Intestate, and the said Eliz. Gaine is also dead, and the Estate in Law in her Lifetime became absolute, and is since devolved and vested in the said Matthew Gaine her Executor; and whereas the Equity of Redemption of the said mortgaged Premisses is in the

the faid Jane Bl. who hath lately covenanted and agreed with the faid Anthony Hoile for Sale thereof to him for the Sum of 200 L. Now this Indenture witnesses, That the faid Mat. Gaine, for and in Consideration of the Sum of 200 l. of, Esc. to him in Hand paid by the faid Anthony Hoile, at and before, &c. (the Receipt whereof is hereby acknowledg'd by the said Mat. Gaine, and at and with the Consent and Request of the said Jane Blundell, certified by her being a Party, &c.) hath bargained, fold, affigned, and by thefe Prefents doth, &c. the faid recited Indentures of Leases, Indentures of Assignment, Piece or Parcel of Ground, Meffuages, Tenements and Premisses, &c. herein meant, mention'd or intended to be affigned: And all the E-flate, Right, Title, Interest, Term of Years to come and unexpired, Use, Possession, Reversion, Rents, Issues, Profits, Benefits, Advantage, Property, Claim and Demand whatfoever of him the faid Mat. G. as Executor to the said Eliz. G. or otherwise in his own Right, of, in, to and out of the faid Premiffes. Esc. by Force, Vertue or Means of the faid recited Indenture of Leafe, Indenture of Affignment or otherwise howsoever. To have and to hold, &c. from henceforth forward, for and during all the reft, Esc. in as large, ample and beneficial Manner, to all Intents, Conftructions and Purposes, as the faid Eliz, G. (in her Life-time) or the faid Mat. G. her Executors, may, could, or of Right ought to have held and enjoyed the same, had these Presents never been made. And this Indenture further witnesseth, That the faid Fane Blundell, for the Confideration aforesaid.

aforesaid, and for the Consideration of the Sum of 5 s. of like lawful, &c. hath granted. &c. and by these Presents doth grant, bargain, fell, ratify and confirm unto the faid A. H. his, &c. the hereby affigned or meant, mentioned or intended to be affigned Premisses, with their, and every of their Appurtenances, and all her Right, Title, Intereft, Truft, Property, Claim and Demand whatfoever in Law or Equity. To have and to hold the same unto him the said, &c. his Executors and Affigns, freely acquitted, released, and discharged of and from all Benefit and Equity of Redemption in the faid herein recited Indenture Tripartite mention'd and contain'd, and of and from all other Equity of Redemption whatfoever, paying and performing, growing Rents and Covenants in the faid original Leafe contained on the Part of the Leslee, &c.

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The Plea and Answer of J. S. of, &c. to the Bill of Complaint of T. S. Gent. Complainant.

Equity of Redemption Purchased, pleaded.

HIS Defendant, by Protestation, not In Scace. confessing all or acknowledging all or any the Matters or Things in the faid Bill of Complaint contained, to be true in such Manner and Form as the same are therein set forth and charged against this Defendant. other than such as are herein after confessed and set forth by this Defendant's Answer: As to so much of the Complainant's faid Bill as pretends or chargeth, that the Complainant is intitled in Equity to have an Account from this Defendant of the Rents, Issues, and Profits of the Manors, Messuages, Lands, Tenements and Premisses in the Bill mentioned, taken, or received by this Defendant's faid Father in his Life-time, and this Defendant fince his Death: And that he the faid Complainant ought to be admitted to redeem the faid Manors, Messiages, Lands, and Freehold Premisses. He this Defendant for Plea thereto faith, That the Complainant's Grandfather did, as this Defendant verily believes, mortgage the faid Manor and Premiffes to I. S. for the principal Sum of 800 L and afterwards, upon this Defendant's faid Father's Intermarriage with the Daughter of the faid J. S. the faid J. S. did affign the faid Mortgage to this Defendant's faid Fa-

ther, in and for Part of his Wife's Portion: and that after the Affignment of the faid Mortgage (to wit) sometime in the Month of January in the Year of our Lord 1670, or thereabouts, the Defendant's faid Father H. S. came to an Agreement with W. S. the Complainant's Grandfather, and W. S. the Younger, Father of the Complainant, for the absolute Purchase of the Reversion, Inheritance, and Equity of Redemption of the Premisses mortgaged as aforesaid to this Defendant's faid Father. And it was thereupon agreed by the faid W. S. the Complainant's Grandfather, and W.S. his Father, and this Defendant's faid Father, That the faid Reversion, Inheritance, and Equity of Redemption of the faid Premisses expectant upon the faid mortgaged Term, should by them the said W. S. the Grandfather, and W. S. the Father. be settled to and upon G. L. of, &c. and his Heirs and Assigns for ever, being a Person nominated and appointed by this Defendant's faid Father to take the same in Trust for him this Defendant's faid Father, his Heirs and Assigns, to prevent the drowning of the abovefaid mortgaged Term affigned to and vested in this Defendant's said Father as aforefaid. Purfuant to which faid Agreement the faid W. S. the Grandfather, and W. S. the Father of the Complainant, by their Deed indented, bearing Date the, &c. made between them the faid W. S. the Grandfather, and W.S. the Father, of the one Part, and the abovefaid G. L. of the other Part; one Part whereof under the Hands and Seals of the said W.S. the Grandfather, and W.S. the

Father, this Defendant hath ready to produce to this Hononrable Court, did, for the Confideration of 5 s. therein mentioned, to be paid to them by the faid G. L. demife, grant, bargain and fell unto the faid G. L. the abovefaid Manors, Meffuages, and all the Freehold Premisses mentioned in the Complainant's faid Bill to be mortgaged as aforesaid, by the Name of all that Manor of K. alias, &c. and all the Rights, Members, Profits, Perquifites of Court, and Appurtenances thereunto belonging, then in the Occupation of W. S. the younger, Father of the Complainant or his Assigns: And all that Messuage, Tenement or Farm, situate, and being in K. aforesaid, called or known by the Name of N. or by what other Name foever the same be called or known, and all the Houses, Buildings, Yards, Gardens, Orchards, Lands, Tenements, Meadows, Pa-Feedings, Heath-Ground, Woods, Underwoods, Sheep Walks, Hereditaments, and Appurtenances, being Freehold, to the faid Meffuage or Tenement belonging, or therewith then or late before this used, occupied or enjoyed, as the same then or late before then were in the several Occupations of, &c. their Assign or Assigns: And all that Messuage or Tenement situate in K. aforesaid, called or known by the Name of, &c. or by whatfoever Name or Names the fame be called or known, with all the Houses, Buildings, Yards, Gardens, Orchards, Lands, Tenements, &c. and Appurtenances to the faid last mentioned Messuage or Tenement belonging, or therewith then or late before then used, occupied or enjoyed as the same then, or late before then, was in the Occupation

tion of I. W. &c. and all other the Freehold Lands, Tenements, Meadows, Pastures, Feedings, Woods, Underwoods, Fold-Coura fes, Liberties of Foldage, Heath Grounds, Commons, and Hereditaments whatsoever, of them the faid W.S. the Elder, and W.S. the Younger, or either of them, fituate, lying, and being in K. aforesaid, or in any other Town there near adjoining, between the Way, &c. towards the North, and the Way called the, &c. leading from, &c. towards the South, in the feveral Occupations, as well of them the faid W. S. &c. as of, &c. their or some or one of their Assignee, or Affigns, To have and to hold all and fingular the faid Manors, Messuages, Lands, and Premisses, to him the faid G. L. his Executors and Administrators, from the Day of the Date of the faid Deed, for and during the full End and Term of one whole Year from thence next enfuing, and fully to be compleat and ended. After the executing of which faid Deed, the Complainant's faid Grandfather and Father, by another Deed indented, bearing Date the 26th Day of Famiary, &cc. and made between them the faid W. S. the Grandfather, and W. S. the Father, by the Name of, &c. of the one Part. and the faid G. L. by the Name of G. L. of. &c. of the other Part (one Part whereof under the Hands and Seals of W. S. the Grandfather, and W. S. the Father of the Complainant, this Defendant hath ready to produce to this Honourable Court) reciting, That whereas they the faid W.S. the Elder, and W. S. the Younger, had by their said Deed of Bargain and Sale, conveyed the Premisses unto the said G. L. for one whole Year,

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Year, and that the faid G. L. was by Virtue of the faid Deed, and of the Statute for transferring of Uses into Possession, in actual Possession thereof, they the said W. S. the Elder, and W. S. the Younger, for divers good Causes and Considerations, them thereunto moving, did for themselves, their Heirs and Affigns, grant, releafe, and confirm unto the faid G. L. all and fingular the faid demised Manor, Messuages, Lands, Tenements and Premisses, with their Appurtenances, and all the Estate, Right, Title, Interest, Equity of Redemption, Condition, Reversion, Remainder, Claim and Demand whatfoever of them the faid W.S. the Elder. and W.S. the Younger, or either of them. of, in, or to the same, To have and to hold the same to the said G. L. his Heirs and Asfigns, to the only Use of him the said G. L. his Heirs and Affigns for ever; which faid Conveyance of Reversion, and Equity of Redemption of the Premisses, to the said G. L. as foresaid, he the said G. L. by his Deed-Poll, bearing Date the 27th Day of January, in, &c. duly executed by him under his Hand and Seal, did declare to be made by him only in Trust for the faid W. S. this Defendant's said Father and his Heits, as by the faid Deed which this Defendant hath ready to be produced to this Honourable Court, doth and may appear.

And this Defendant doth further say, That the aforesaid Deed of Grant and Release, made to the said G. L. of the said Manor, Messuges, Lands and Premisses as aforesaid, doth contain an Exception of the said

faid Mortgage to the faid I.S. and also of an Annuity of 40 l. per Annum, payable Quarterly out of the Premisses to M. then Wife, and now the Widow and Relict of A.S. Gent. and the Heirs of her Body, with which this Defendant doth hold the Premisses now charged; but that the said Deed doth not contain, or any Way purport any Condition, Proviso, Clause, Covenant, or Agreement whatfoever, for, or of any Power or Equity of Redemption of the Premisses, or any Part thereof, or any Exception of any Part thereof, or of any Interest therein, other than as herein before is fet forth. But this Defendant doth infift, and doth verily believe, that the same was an absolute Purchase made by this Defendant's said Father, for a good and valuable Confideration, without any Promise or Agreement, either in Writing, or otherways howfoever made or mentioned between the Defendant's faid Father, and the Complainant's faid Father or Grandfather, whereby the Complainant's faid Father or Grandfather, was, were, or might be intituled to any Right or Equity of Redemption, in, or to the Premisses, or any Part thereof, after the Conveyance of the same to the said G. L. as aforesaid, and to fo much of the Complainant's faid Bill of Complaint, as demands an Account of the Rents and Profits, and of the Redemption of the Copyhold and Premisses therein mentioned. For Plea thereunto, this Defendant faith, That W. S. the Complainant's Grandfather, being seised of about 26 Acres of Land, holden by Copy of Court-Roll, of the Manor of P. lying and being in the Parish of K. in the Bill mentioned on the 26th Day of J. m

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in the Year of our Lord, &c. did furrender the same out of his Hands, into the Hands of the Lord of the faid Manor, by the Rod, by the Hands of T. K. Copyhold Tenant of the faid Manor, in the Presence of T. S. likewise Copyhold Tenant thereof, witnesing the same according to the Custom of the said Manor, to the absolute Use and Behoof of H. S. this Defendant's faid Father, his Heirs and Assigns for ever, without any Condition, Proviso, or Power of Redemption whatfoever. And that purfuant to the faid Surrender, this Defendant's faid Father, at a Court holden for the faid Manor, the 14th Day of, &c. in the Year of our Lord, &c. (the faid Surrender having been duly presented at the next Court holden for the faid Manor, after the taking therecf, according to the Custom of the said Manor) was admitted to the Copyhold Premisses, surrendred as aforesaid. To hold to him and his Heirs, at the Will of the Lord, according to the Custom of the said Manor, and according to the Form and Effect of the faid Surrender. And further this Defendant for Plea as aforesaid saith. That the faid W. S. the Complainant's Grandfather, being likewise seised of certain other Pieces, or Parcels of Copyhold Land, lying and being in K. aforesaid, &c. (The like Plea to them ut fupra.) Which said several Conveyances of the faid Manors, Messuages, Lands and Freehold Estate, and also the Surrenders made as aforefaid, of the abovefaid Copyhold Premisses, (being to the best of the Defendant's Knowledge) all the Copyhold Lands and Tenements which this Defendant, or his faid Father ever had or claim-

ed to have, from or under the Complainant's faid Grandfather or Father; as also the respective Admissions of this Defendant's said Father herein before set forth, he this Defendant doth infift on, and doth verily believe were absolute, without any Agreement or Power of Redemption, and the same is ready to aver, maintain and prove, as this Honourable Court shall award, and pleads the same in Bar to such Part of the Complainant's faid Bill, as prays an Account and a Redemption of the faid Manors, Melfuages, Lands, Freehold and Copyhold Premiffes, and humbly prays the Judgment of this Honourable Court, whether he, this Defindant, is compellable to make any further, or other Answer thereto. And for Answer to all the Charges, Matters and Things in the faid Bill of Complaint contained, and not herein before pleaded unto, faith, That he believed the Complainant's Grandfather, in the Bill named, was seised in Fee of the Manor, Meffuages, Lands, and Tenements in the Bill mentioned, and herein before pleaded unto; and that having made fuch Mortgage as is in the faid Bill mentioned, unto I. S. he the faid I. S. did in the Year 1662, affign over the same to H. S. this Defendant's Father, for Confideration and Security of 800 l. part of his faid Father's Mortgage Portion, with Anne the Daughter of the faid I.S. And this Defendant further faith. That he claims the faid Manor, Meffuages, Lands, Tenements, and Freehold Eftate, and also the said Copyhold Lands (of which his faid Father made Surrender to the Use of his last Will, as this Defendant doubts not but to prove by the last Will and Testament of his

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his faid Father.) And this Defendant doth deny, that his faid Father, to his Knowledge, made any Promise or Agreement to pay any other, or further Sum of Money, for the faid Copyhold Premisses, than he paid at, and upon the Surrender of the fame, and doth deny all manner of unlawful Combination, &c. without that, that any other Matter or Thing in the faid Bill of Complaint contained, material or effectual in the Law for this Defendant to answer unto, and not herein and before well and fufficiently answered unto, confessed or avoided, traversed or denied, is true to the Knowledge of this Defendant: All which Matters and Things, this Defendant is ready to aver, maintain and prove, as this Honourable Court shall award, and humbly prays to be hence difmiffed, with his reasonable Costs and Charges in this Behalf wrongfully fuftained. **₩. E.**

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